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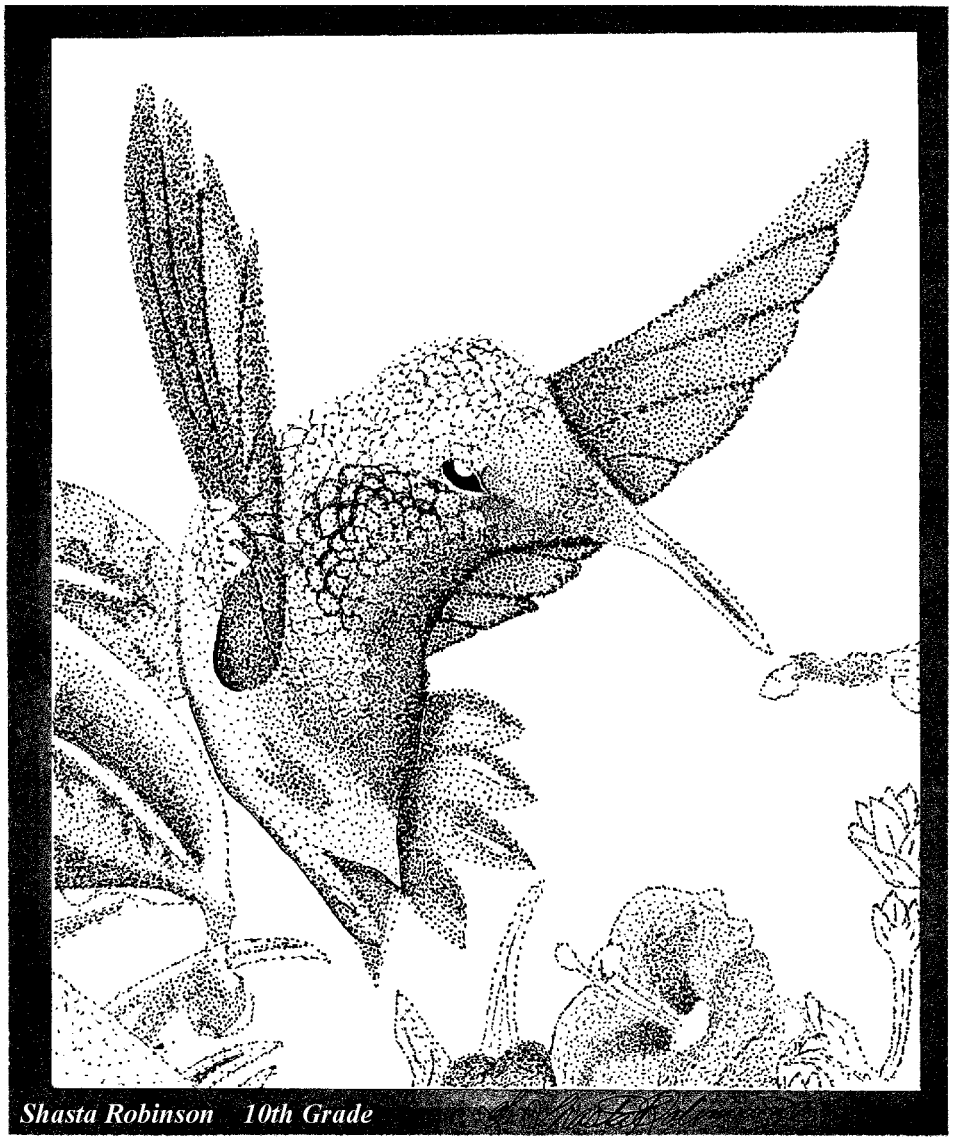

Shasta Robinson 10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 24, 2004

Appointed to the Sulphur River Basin Authority, Board of Directors for a term to expire February 1, 2007, Mike E. Russell of Powderly (replacing Patsy McClain of Sulphur Springs whose term expired).

Appointed to the Sulphur River Basin Authority, Board of Directors for a term to expire February 1, 2007, Mickey McKenzie of Sulphur Springs (replacing Robert Parker of Paris whose term expired).

Appointed to the Sulphur River Basin Authority, Board of Directors for a term to expire February 1, 2009, Jim F. Thompson of Atlanta (replacing Charles Lowry of Mount Vernon whose term expired).

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2005, Jacob M. Monty of Houston.

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2005, George B. Craig of Corpus Christi.

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2005, Charlene Ritchey of Gainesville.

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2007, Linda J. Sadler of Lubbock.

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2007, Michael H. Samulin of San Antonio.

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2009, John E. Chism of Irving.

Appointed to the Texas Private Security Board, pursuant to HB 37, 78th Legislature, 3rd Called Session, for a term to expire January 31, 2009, Harold G. Warren of Austin.

Rick Perry, Governor

TRD-200402230

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0195-GA

Requestor:

Mr. David R. Austin

Ector County Auditor

1010 East 8th Street, Room 520

Odessa, Texas 79761

Re: Authority of a county auditor to approve a claim on a contract awarded in violation of competitive procurement requirements under chapter 262 of the Local Government Code (Request No. 0195-GA)

Briefs requested by April 29, 2004

RQ-0196-GA

Requestor:

The Honorable Rene Guerra

Hidalgo County Criminal District Attorney

Hidalgo County Courthouse

100 North Closner, Room 303

Edinburg, Texas 78539

Re: Whether deputy district clerks are eligible for inclusion in a county civil service plan (Request No. 0196-GA)

Briefs requested by April 29, 2004

RQ-0197-GA

Requestor:

The Honorable David Motley

Kerr County Attorney

Kerr County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether the judge of the constitutional county court of Kerr County is required to hear all mental health commitment hearings held at the Kerrville State Hospital (Request No. 0197-GA)

Briefs requested by April 30, 2004

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200402194
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: March 30, 2004

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS

10 TAC §301.1

The Texas Residential Construction Commission is renewing the effectiveness of the emergency adoption of new §301.1, relating to Definitions, with the new effective date to commence on April 16, 2004, at the expiration of the original 120-day effective period, for an additional 60-day period. The text of the new section was originally published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 257).

Filed with the Office of the Secretary of State, on March 26, 2004.

TRD-200402128
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: April 17, 2004
Expiration date: June 15, 2004
For further information, please call: (512) 475-0595

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CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §§303.1, 303.3, 303.5, 303.7, 303.9, 303.11, 303.13, 303.15, 303.17, 303.19, 303.21, 303.23

The Texas Residential Construction Commission is renewing the effectiveness of the emergency adoption of new §§303.1, 303.3, 303.5, 303.7, 303.9, 303.11, 303.13, 303.15, 303.17, 303.19, 303.21, and 303.23, relating to the Registration of Builders, with the new effective date to commence on April 16, 2004, at the expiration of the original 120-day effective period, for an additional 60-day period. The text of the new sections was originally published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 258).

Filed with the Office of the Secretary of State, on March 26, 2004.

TRD-200402129
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: April 17, 2004
Expiration date: June 15, 2004
For further information, please call: (512) 475-0595

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SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §§303.100, 303.110, 303.120, 303.130, 303.140, 303.150, 303.160, 303.170

The Texas Residential Construction Commission is renewing the effectiveness of the emergency adoption of new §§303.100, 303.110, 303.120, 303.130, 303.140, 303.150, 303.160 and 303.170, relating to the Registration of Homes, with the new effective date to commence on April 16, 2004, at the expiration of the original 120-day effective period, for an additional 60-day period. The text of the new sections was originally published in the January 9, 2004, issue of the *Texas Register* (29 TexReg 260).

Filed with the Office of the Secretary of State, on March 26, 2004.

TRD-200402130
Susan Durso
General Counsel
Texas Residential Construction Commission
Effective date: April 17, 2004
Expiration date: June 15, 2004
For further information, please call: (512) 475-0595

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor proposes the amendment of Subchapter A §§3.3, 3.5, 3.7, 3.9, 3.19, and 3.21; Subchapter B §§3.53, 3.55, 3.75, 3.77, 3.79, 3.81, 3.83, and 3.85; Subchapter C §§3.103, 3.111, 3.201, 3.203, 3.301, 3.303, 3.305, 3.401, 3.403, 3.501, 3.503, 3.505, 3.511, 3.601, 3.609, 3.613, 3.721, 3.723, 3.801, 3.803, 3.901, 3.903, 3.905, 3.1005, 3.1101, 3.1103, 3.1201, 3.1203, 3.1205, 3.1211, 3.1213, and 3.1303; Subchapter D §§3.2007, 3.2009, and 3.2013; Subchapter E §§3.2501, 3.2507, 3.2511, 3.2513, 3.2515, 3.2525, and 3.2529; Subchapter F §3.2601 and §3.2603; Subchapter G §§3.8105, 3.8115, 3.8205, 3.8215, 3.8305, and 3.8315; and Subchapter I §3.9300.

The Office of the Governor proposes the addition of Subchapter C §§3.211, 3.313, 3.725, 3.809, 3.811, and 3.1111.

The Office of the Governor proposes the repeal of Subchapter C §§3.1215, 3.1401, 3.1403, 3.1405, 3.1409, 3.1411, 3.1413, and 3.1415.

The proposed amendment to §3.3 changes the name of the "Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source.

The proposed amendment to §3.5 clarifies the meaning of the section by: (1) changing the word "kind" to "type" in subsection (a)(2); and (2) removing unnecessary language in subsection (b).

The proposed amendment to §3.7 clarifies the requirement of the Governor's Criminal Justice Division (CJD) that all grant applications be submitted directly to CJD. This allows CJD to review the applications for eligibility before they are prioritized by a review group, regional Council of Governments (COG), or other designee of CJD. In the past, certain types of grant applications were submitted directly to COGs.

The proposed amendment to §3.9 clarifies that all grant funding decisions are within the discretion of CJD and that approval of a grant award does not give the applicant special consideration for future grant funding or entitle the applicant to additional grant funds.

The proposed amendment to §3.19 clarifies which funding sources are exempt from the federal requirements for the Texas Review and Comment System.

The proposed amendment to §3.21 clarifies that CJD may submit information to applicants or grantees via the Internet or other electronic means, and may require applicants or grantees to submit information to CJD in the same manner. The use of electronic communication provides for a more efficiency flow of information and greater cost savings to the state, applicants and grantees.

The proposed amendment to §3.53 sets forth the current priority needs for juvenile justice and youth projects. These priority needs were developed in coordination with the Governor's Juvenile Justice Advisory Board.

The proposed amendment to §3.55: (1) deletes subsections (a) from this section and transfers it to §3.101 relating to the State Criminal Justice Planning (421) Fund because it sets forth the basic purpose and the central project requirement of the State Criminal Justice Planning (421) Fund; (2) deletes subsection (b) because it does not adequately define the types of projects to which it applies; and (3) deletes subsection (c) and transfers it to §3.311 relating to the State Criminal Justice Planning (421) Fund because this requirement is applicable to state funds and does not apply to the federal funding sources. The federal funding sources are regulated by federal program requirements. In addition, many of the federal funding sources fund programs for juvenile offenders, which are not subject to these requirements, or drug treatment, which is an exception to these requirements.

The proposed amendment to §3.75: (1) clarifies that grant funds may be used to compensate court masters, magistrates, referees, or judges in juvenile courts or drug courts because the use of funds for this purpose is necessary to establish such programs; (2) deletes the reference to the "Extraordinary Costs of Investigating and Prosecuting Capital Murder and Hate Crimes Program" from the list of exceptions because the program is no longer administered by CJD; and (3) clarifies the section by transferring subsection (e) to subsection (c) regarding overtime pay.

The proposed amendment to §3.77: (1) clarifies the requirement, set forth in the Uniform Grant Management Standards, that grantees establish a system for ensuring that subcontractors provide the products and services specified in their contracts; (2) refers grantees to the requirement that a procurement questionnaire must be submitted for all procurements that exceed $100,000 or upon CJD request.

The proposed amendment to §3.79: (1) changes the name of the "Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source; and (2) clarifies that the exemption in subsection (b) applies only to subsection (b) and clarifies the language in this subsection to ensure the use of uniform language in this chapter.

The proposed amendment to §3.81 clarifies that the exemption in subsection (b) applies only to subsection (b) and clarifies the

language in this subsection to ensure the use of uniform language in this chapter.

The proposed amendment to §3.83 corrects the reference in this section to indicate that "approved budget categories" is defined in §3.3(10).

The proposed amendment to §3.85 clarifies that the exemption in subsection (d) applies only to subsection (d) and clarifies the language in this subsection to ensure the use of uniform language in this chapter.

The proposed amendment to §3.103 conforms the project requirements under the State Criminal Justice Planning (421) Fund to the state statutory requirements for this funding source under Article 102.056 of the Texas Code of Criminal Procedure.

The proposed amendment to §3.111: (1) deletes the language regarding renovation or retrofitting of existing facilities because it is permissive and these projects remain eligible to be funded under this funding source; and (2) adds the requirement that was transferred from §3.55(c).

The proposed amendment to §3.201 updates the language of subsection (a) to reflect the current citation for the federal legislation that authorizes the Juvenile Justice and Delinquency Act Fund.

The proposed amendment to §3.203 conforms the project requirements under the Juvenile Justice and Delinquency Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.301: (1) updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Title V Delinquency Prevention Act Fund; and (2) conforms the program purpose under the Title V Delinquency Prevention Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.303 conforms the project requirements under the Title V Delinquency Prevention Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.305 deletes the language regarding the local policy board and transfers it to new §3.313, which relates to local policy boards.

The proposed amendment to §3.401: (1) updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Safe and Drug-Free Schools and Communities Act Fund; and (2) conforms the program purpose under the Safe and Drug-Free Schools and Communities Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.403 conforms the project requirements under the Safe and Drug-Free Schools and Communities Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.501 conforms the program purpose under the Victims of Crime Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.503 conforms the project requirements under the Victims of Crime Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.505 conforms the list of eligible applicants and the criteria that must be met by eligible applicants under the Victims of Crime Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.511 conforms the list of ineligible activities and costs under the Victims of Crime Act Fund to the federal requirements for this funding source.

The proposed amendment to §3.601 clarifies the language of the section.

The proposed amendment to §3.609 clarifies that the exemption in this section applies only to this section and clarifies the language in this section to ensure the use of uniform language in this chapter.

The proposed amendment to §3.613 clarifies that a grant awarded to a crime stoppers organization under the Crime Stoppers Assistance Fund will terminate not only when the organization is decertified, but also when the organization's Crime Stoppers certification expires.

The proposed amendment to §3.721 clarifies that only multi-jurisdictional drug task force projects are required to certify that they will conduct drug testing. Mandatory drug testing is necessary for these projects because of task force personnel's access to confidential information and illegal drugs.

The proposed amendment to §3.723: (1) clarifies that advisory boards are established only for multi-jurisdictional drug task force projects; and (2) deletes the language regarding task force personnel and transfers the language to new §3.725, which relates to task force personnel.

The proposed amendment to §3.801 updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Local Law Enforcement Block Grant Program.

The proposed amendment to §3.803 deletes the language regarding prohibited uses of grant funds under the Local Law Enforcement Block Grant Program from this section, entitled "Program Requirements", and transfers it to new §3.811, entitled "Ineligible Activities and Costs". The proposed amendment makes the sections relating to the Local Law Enforcement Block Grant Program more consistent with the sections relating to other funding sources administered by CJD.

The proposed amendment to §3.901 changes the "Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source.

The proposed amendment to §3.903: (1) changes the "STOP Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source; and (2) corrects the punctuation in this section.

The proposed amendment to §3.905 corrects the punctuation in this section.

The proposed amendment to §3.1005 changes "nonprofit organizations" to "nonprofit corporations" to ensure the use of uniform language in this chapter.

The proposed amendment to §3.1101 conforms the program purpose under the Residential Substance Abuse Treatment Grant Program to the federal requirements for this funding source.

The proposed amendment to §3.1103 conforms the project requirements under the Residential Substance Abuse Treatment Grant Program to the federal requirements for this funding source.

The proposed amendment to §3.1201 updates the language of subsection (b) to reflect the current citation for the federal legislation that authorizes the Juvenile Accountability Block Grant Program.

The proposed amendment to §3.1203 conforms the project requirements under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source.

The proposed amendment to §3.1205 conforms the list of eligible applicants and funds available to eligible applicants under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source.

The proposed amendment to §3.1211 conforms the waiver of application process under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source and CJD's procedures.

The proposed amendment to §3.1213: (1) conforms the requirements for local advisory boards under the Juvenile Accountability Block Grant Program to the federal requirements for this funding source; and (2) adds the language regarding coordinated enforcement plan that was transferred to this section from §3.1215.

The proposed amendment to §3.1303 conforms the project requirements under the Coverdell Forensic Sciences Program to the federal requirements for this funding source.

The proposed amendment to §3.2007 clarifies the language in this section to ensure the use of uniform language in this chapter.

The proposed amendment to §3.2009 exempts grantees that have statewide jurisdiction to make arrests and execute process in criminal cases from the requirement that they obtain the signature of each sheriff because such grantees have statewide jurisdiction and do not require the permission of the counties to exercise their jurisdiction in each county.

The proposed amendment to §3.2013 clarifies the language in this section to ensure the use of uniform language in this chapter.

The proposed amendment to §3.2501: (1) clarifies the language in subsection (a) to ensure the use of uniform language in this chapter; (2) encourages grantees to use every effort to ensure that grant officials have access to e-mail and the Internet to promote a more efficiency flow of information and greater cost savings to the state and grantees; (3) adds a reasonable time limit for notifying CJD of changes in grant officials and contact information because current information of this type is necessary for CJD to effectively administer and monitor grants.

The proposed amendment to §3.2507 clarifies the language in this section to ensure the use of uniform language in this chapter.

The proposed amendment to §3.2511: (1) clarifies that advanced funds covering no more than the anticipated expenses for the next month may be provided to a grantee by CJD; (2) exempts Local Law Enforcement Block Grant projects from subsection (a) because the federal requirements for this funding source allow grantees to receive advanced funds covering the entire amount of the grant in certain instances; and (3) requires Crime Stoppers Assistance Fund grantees to request funds once per quarter because of the small size of the grants under this funding source.

The proposed amendment to §3.2513 corrects the reference in this section to indicate that "approved budget categories" is defined in §3.3(10).

The proposed amendment to §3.2515 changes "nonprofit agency" to "nonprofit corporation" to ensure the use of uniform language in this chapter.

The proposed amendment to §3.2525 clarifies that grantees are responsible for managing and monitoring the day to day operations of grant and subgrant supported activities to ensure that grant funds are being properly utilized.

The proposed amendment to §3.2529 clarifies the language in this section to ensure the use of uniform language in this chapter and corrects the punctuation in this section.

The proposed amendment to §3.2601 clarifies the language in this section to ensure the use of uniform language in this chapter.

The proposed amendment to §3.2603 clarifies the language in this section to ensure the use of uniform language in this chapter.

The proposed amendment to §3.8105 conforms the powers of the Crime Stoppers Advisory Council to the powers stated in Chapter 414 of the Texas Government Code.

The proposed amendment to §3.8115 italicizes the name of the publication, "*Roberts Rules of Order*".

The proposed amendment to §3.8205 updates the language of subsection (a)(3) to reflect the current citation for the Juvenile Justice and Delinquency Prevention Act.

The proposed amendment to §3.8215 italicizes the name of the publication, "*Roberts Rules of Order*".

The proposed amendment to §3.8305 changes the "STOP Violence Against Women Act Fund" to the "S.T.O.P. Violence Against Women Act Fund" to reflect the current name of this federal funding source.

The proposed amendment to §3.8315 italicizes the name of the publication, "*Roberts Rules of Order*".

The proposed amendment to §3.9300 replaces the memorandum of understanding in Figure: 1 TAC §3.900 between the Texas Department of Public Safety and CJD with the most recent version of the memorandum of understanding adopted by the parties pursuant to §411.0096 of the Texas Government Code.

The proposed addition of §3.211 conforms the list of ineligible activities and costs under the Juvenile Justice and Delinquency Act Fund to the federal requirements for this funding source.

The proposed addition of §3.313 establishes local prevention policy boards in accordance with the requirements of the Title V Delinquency Prevention Act Fund.

The proposed addition of §3.725: (1) adds the language regarding task force personnel that was transferred to this section from §3.723; and (2) clarifies that, although the Texas Department of Public Safety exercises command and control over all narcotics task forces funded by the Byrne Formula Grant Program through CJD, task force employees remain employees of their assigning agencies and are not considered employees of the Texas Department of Public Safety or the other entities listed in this section.

The proposed addition of §3.809 conforms requirements regarding indirect costs under the Local Law Enforcement Block Grant Program to the federal requirements for this funding source.

The proposed addition of §3.811 adds to this section, entitled "Ineligible Activities and Costs", the language regarding prohibited uses of grant funds under the Local Law Enforcement Block Grant Program that was deleted from §3.803, entitled "Program

Requirements". The proposed amendment makes the sections relating to the Local Law Enforcement Block Grant Program more consistent with the sections relating to other funding sources administered by CJD.

The proposed addition of §3.1111 conforms the list of ineligible activities and costs under the Residential Substance Abuse Treatment Grant Program to the federal requirements for this funding source.

The proposed repeal of §3.1215 deletes the language regarding coordinated enforcement plan from this section and transfers it to §3.1213.

The proposed repeal of §§3.1401, 3.1403, 3.1405, 3.1409, 3.1411, 3.1413, and 3.1415 deletes the language regarding the Rural Domestic Violence and Child Victimization Enforcement Program because CJD no longer administers this funding source.

The Office of the Governor reviewed the rules affecting the Criminal Justice Division grant processes and procedures with the goal of increasing efficiency and updating the rules to address changes in the administration process. The review disclosed that a number of the rules required further clarification and simplification. As a result, the Office of the Governor has determined that the sections in the Texas Administrative Code identified above should be amended, added, or repealed.

Kim Garrett, Budget Manager for the Criminal Justice Division of the Office of the Governor, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Garrett has also determined that for the first five-year period that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or businesses for complying with the proposed rules.

Comments on the proposed amendments, additions, and repeals may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, at hmorgan@governor.state.tx.us; P. O. Box 12428, Austin, Texas 78711; or (512) 463-1919. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §§3.3, 3.5, 3.7, 3.9, 3.19, 3.21

The amendment of these rules is proposed under §772.006(a)(10)of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless otherwise indicated:

(1) CJAC: Criminal Justice Advisory Committee, a component of a COG. A CJAC must have a multi-disciplinary representation of members from the region. This representation must contain members from the following groups: concerned citizens or parents, drug abuse prevention, education, juvenile justice, law enforcement, mental health, nonprofit organizations, prosecution/courts, and victim services. No single group may constitute more than one third of the CJAC;

(2) CJD: The Criminal Justice Division of the Office of the Governor or its designee;

(3) COG: a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;

(4) executive director: the executive director of CJD;

(5) grantee: an agency or organization that receives a grant award;

(6) grant funds: CJD-funded and matching funds portions of a grant project;

(7) OJP Financial Guide: the financial guide issued by the federal Office of Justice Programs, United States Department of Justice, applicable to the use of federal Department of Justice money in state grant projects;

(8) special condition: a condition placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the CJD-funded portion of a grant project;

(9) UGMS: the Uniform Grant Management Standards promulgated by the Governor's Office of Budget and Planning at 1 T.A.C. §§5.141 - 5.167;

(10) approved budget categories: budget categories (including personnel, contractual and professional services, travel, equipment, construction, supplies and other direct operating expenses, and indirect costs) that contain a line item with a dollar amount greater than zero that is approved by CJD through a grant award or a budget adjustment;

(11) applicant: an agency or organization that has submitted a grant application or grant renewal documentation;

(12) program income: gross income earned by the grantee during the funding period as a direct result of the award. "Direct result" is defined as a specific act or set of activities that are directly attributable to grant funds and that are directly related to the goals and objectives of the project. Program income includes, but is not limited to, forfeitures, cash contributions, donations, restitution, interest income, fees, and royalties;

(13) equipment:

(A) an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the grantee for financial statement purposes or $1,000; or

(B) any of the following items with costs between $500 and $1000: stereo systems, still and video cameras, facsimile machines, VCRs and VCR/TV combinations, cellular and portable telephones, and computer systems.

(14) matching funds: the grantee's share of the project costs. Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. In-kind match is allowed only in the following funding sources: Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and S.T.O.P. Violence Against Women Act Fund.

§3.5. Grant Submission Process.

(a) When applying for a grant pursuant to a Request for Applications (RFA) published in the *Texas Register* by CJD, applicants must submit their applications according to the requirements provided in the RFA. The RFA will provide the following:

(1) the applicable funding source or sources;

(2) the types [~~kinds~~] of grants available;

(3) information regarding deadlines for grant application submission;

(4) the maximum and minimum amounts of funding available for a grant, if applicable;

(5) the start dates for grants, and the length of grant periods;

(6) how applicants may obtain application kits;

(7) where applicants must submit applications;

(8) eligibility requirements;

(9) the selection process;

(10) any prohibitions on the use of grant funds; and

(11) contact information.

(b) CJD may also consider applications for [~~non-scheduled~~] grants that are not submitted pursuant to an RFA. Applicants will be selected in accordance with §3.7(b) of this chapter.

(c) Applicants must apply for funds using the procedures, forms, and certifications prescribed by CJD.

§3.7. Selection Process.

(a) All applications must be submitted to CJD. Applications submitted to CJD pursuant to an RFA are reviewed [~~For applications submitted directly to CJD, staff members, or a review group selected by the executive director, will review the applications~~] for eligibility, reasonableness, availability of funding, and cost-effectiveness [~~and give their funding recommendations to the executive director, who will render the final funding decision~~]. For applications submitted pursuant to an RFA, the executive director will select a review group, COG, or other designee to prioritize the applications and submit a priority listing to the executive director, who will render the final funding decision. A review group may include staff members, experts in a relevant field, and members of an advisory board or council.

(b) For applications submitted [~~directly~~] to CJD pursuant to §3.5(b) of this chapter, the executive director will decide whether to fund the application based upon the following factors:

(1) the inherent value of the project's impact;

(2) whether the project has the potential to be a model program; or

(3) whether delaying the application would have a significant negative impact on the immediate need for the project.

(c) For applications prioritized by [~~submitted directly to~~] a COG, the CJAC must [~~review and~~] prioritize the applications[~~,~~] and prepare [~~the COG's governing body must approve~~] the priority listing. The COG's governing body must approve the priority listing. The COG then must submit the priority listing [~~and the applications~~] to CJD within the time periods established by CJD. CJD will render final funding decisions on these applications based upon the COG priorities, eligibility, reasonableness, availability of funding, and cost-effectiveness.

(d) For applications prioritized by a COG and seeking funding [~~through a COG~~] from the State Criminal Justice Planning Fund, the Juvenile Justice and Delinquency Prevention Act Fund, or the Safe and Drug-Free Schools and Communities Act Fund, CJD will allocate funding through a formula based upon population figures and crime rates. No formula-based funding allocation exists for applications prioritized by a COG [~~submitted to COGs~~] that seek grants from other funding sources.

(e) During the review of an application, CJD or its designee [~~a COG~~] may request that the applicant submit additional information necessary to complete the grant review. CJD or its designee [~~a COG~~] may request the applicant to provide any outstanding forms and documents to clarify or justify any part of the application or to disclose other funding sources related to the project. Such requests for information, including the issuance of a preliminary review report, do not serve as notice that CJD intends to fund an application. If CJD is not able to adequately resolve problems within an applicant's budget through the review process, CJD may make the necessary corrections to the budget to bring it into compliance with applicable state or federal requirements. Any corrections to an applicant's budget will be reflected in the award documentation.

~~[(1) If CJD needs additional information on an application submitted through a COG, CJD will send a report requesting the necessary information to the COG, and the applicant must provide the response to the COG by a COG-established deadline.]~~

~~[(2) If CJD needs additional information on an application submitted directly to CJD, CJD will send a report directly to the applicant, and the applicant must provide a response by a CJD-established deadline.]~~

~~[(3) If CJD is not able to adequately resolve problems within an applicant's budget through the preliminary review process, CJD may use its discretion to make the necessary corrections to the budget to bring it into compliance with applicable state or federal requirements. Any corrections to an applicant's budget will be reflected in the award documentation.]~~

(f) CJD will inform applicants in writing of funding decisions on their grant applications through either a Statement of Grant Award or a notification of denial. For applications prioritized by [~~submitted to~~] a COG that do not receive funding recommendations, the COG notification of the decision not to recommend funding serves as the applicant's notification of denial.

(g) All funding decisions made by the executive director are final and are not subject to appeal.

§3.9. Grant Funding Decisions.

(a) All grant funding decisions [~~to fund grant requests~~] rest completely within the discretionary authority of CJD. The receipt of an application for grant funding by CJD does not obligate CJD to fund the grant or to fund it at the amount requested.

(b) Neither the approval of a project nor any [~~CJD makes no commitment that a~~] grant award shall commit or obligate CJD in any way to make any additional, supplemental, continuation, or other award with respect to any approved project or portion thereof[~~, once funded, will receive priority consideration for subsequent funding~~].

(c) CJD makes no commitment that a grant, once funded, will receive priority consideration for subsequent funding.

§3.19. Adoptions by Reference.

(a) Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies.

(b) CJD adopts by reference the rules and documents listed below that relate to the administration of CJD grants.

(1) Uniform Grant Management Standards (UGMS) adopted pursuant to the Uniform Grant and Contract Management Act of 1981, Chapter 783, Texas Government Code. See 1 T.A.C. §§5.141 - 5.167. These requirements apply to all CJD grants, whether state or federal funds, including grants to nonprofit corporations.

(2) Office of Justice Programs, OJP Financial Guide. These requirements apply to grants of federal funds in which the source of the federal funds is the U.S. Department of Justice.

(3) Education Department General Administrative Regulations (EDGAR). See 34 C.F.R. §§74, 75, 76, 77, 79, 80, 81, 82, 85, and 86. These requirements apply to grants of federal funds in which the source of the federal funds is the U.S. Department of Education.

(4) Common Rule for OMB Circular A-102: Grants and Cooperative Agreements with State and Local Governments. See 28 C.F.R. §66. These requirements apply to grants from federal funds to state agencies, cities, counties, community supervision and corrections departments, COGs, and juvenile boards.

(5) OMB Circular No. A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Private Nonprofit Organizations. See 28 C.F.R. §70. These requirements apply to grants from federal funds to universities and colleges.

(6) OMB Circular No. A-21: Cost Principles for Educational Institutions. See 28 C.F.R. §66. These requirements apply to grants from federal funds to educational institutions.

(7) OMB Circular No. A-87: Cost Principles for State, Local, and Indian Tribal Governments. See 28 C.F.R. §66. These requirements apply to all grants from federal funds to state agencies, cities, counties, community supervision and corrections departments, COGs, juvenile boards, and Native American Tribes.

(8) OMB Circular No. A-122: Cost Principles for Private Nonprofit Organizations. See 28 C.F.R. §66. These requirements apply to all grants from federal funds to private nonprofit corporations.

(9) OMB Circular No. A-133: Audits of States, Local Governments, and Nonprofit Organizations. See 28 C.F.R. §66, §70. These requirements apply to all grants funded by CJD from federal funds.

(10) Texas Review and Comment System (TRACS). See 1 T.A.C. §5.191 et seq. Developed in response to Presidential Executive Order 12372, as amended by Presidential Executive Order 12416. These requirements apply to all grants funded by CJD, except for those funded under the Crime Stoppers Assistance Fund, State Criminal Justice Planning (421) Fund, Victims of Crime Act Fund, and Drug Court Program. Participation in TRACS, including receiving a favorable review, does not assure grant funding.

§3.21. Use of the Internet.

(a) CJD may transmit notices, forms, or [~~provide for submission of grant applications, progress reports, financial reports, and~~] other information to an applicant or grantee via the Internet or other electronic means. [~~Completion and submission of documents and information via electronic means meets the relevant requirements contained within this chapter for submitting reports in writing.~~]

(b) CJD may require an applicant or grantee to submit grant applications, progress reports, financial reports, and other information to CJD via the Internet or other electronic means. Completion and submission of information via electronic means meets the relevant requirements contained within this chapter for submitting information in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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SUBCHAPTER B. GENERAL GRANT PROGRAM POLICIES
DIVISION 1. ELIGIBILITY REQUIREMENTS

1 TAC §3.53, §3.55

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.53. Juvenile Justice and Youth Projects.

(a) Juvenile justice projects or projects [~~Projects exclusively~~] serving delinquent [~~juveniles~~] or at-risk youth, regardless of the funding source, must address at least one of the following priority needs developed in coordination with the Governor's Juvenile Justice Advisory Board to be eligible for funding:

(1) Family. [~~Examples include, but are not limited to, programs that:~~]

(A) Instill appropriate social values and character in children, with an emphasis toward education.

(B) Emphasize family preservation, with the focus on identifying juvenile victims, and addressing the impact of domestic violence [~~whenever possible and appropriate~~].

(C) Make available [~~Provide~~] family crisis programs [~~intervention~~] for delinquent or pre-delinquent youth [~~children~~] and their families.

(D) Provide services to children of incarcerated parents and/or children living in foster care or other alternative situations [~~Recognize the role of faith-based programs in preventing juvenile delinquency~~].

(E) Recognize the role of faith-based programs in preventing juvenile delinquency.

(2) Early Intervention and Prevention. [~~Examples include, but are not limited to, programs that:~~]

(A) Address, through community-based efforts, conditions contributing to delinquent behavior, including drug and alcohol abuse.

(B) Address a need for early identification of, and programs for, emotionally disturbed children and children with mental health concerns [~~Hold juveniles accountable and responsible for their actions~~].

[~~(C) Address an increasing need to provide services to children of incarcerated parents and/or living in foster care or other alternative situations.~~]

[~~(D) Address a need for early identification of, and programs for, emotionally disturbed children and children with mental health concerns.~~]

(3) Schools/Education. [~~Examples include, but are not limited to, programs that:~~]

(A) Train educational and law enforcement personnel assigned to schools concerning procedures related to the [~~in~~] juvenile justice system [~~laws and procedures~~].

(B) Maintain a safe and productive learning environment by supporting [~~Encourage~~] appropriate student discipline and accountability [~~to create and maintain a safe and productive learning environment~~].

(C) Teach good citizenship, literacy, and vocational skills.

(D) Identify and target [~~intervene as early as possible with~~] students who are at-risk for truancy and dropping out of school.

(4) Safe Environment [~~Reduce Disproportionate Minority Representation in the Juvenile Justice System~~].[~~Examples include, but are not limited to, programs that:~~]

(A) Counteract gangs through aggressive and comprehensive approaches that include identification, surveillance, arrest, and prosecution of gang members involved in criminal activities [~~Develop a standardized risk assessment instrument to be made available for use by juvenile courts at detention hearings~~].

(B) Involve the local community in comprehensive efforts to deal with [~~Identify and support intervention strategies that could effectively reduce disproportionate representation in appropriate~~] juvenile crime [~~cases~~].

(5) Juvenile Justice Policies, Procedures and Facilities [~~Safe Environment~~].[~~Examples include, but are not limited to, programs that:~~]

(A) Support progressive sanctions for misconduct and delinquent behavior [~~Counteract gangs through identification, surveillance, arrest, and prosecution of gang members involved in criminal activities~~].

(B) Develop computer information systems that will match children and families to appropriate service providers based on risk and needs profiles [~~Involve the local community in comprehensive efforts to deal with juvenile crime~~].

(C) Provide appropriate dispositions to mentally ill youth or youth with mental retardation who are accused of committing crimes.

(D) Develop projects that target female offenders.

[~~(6) Juvenile Justice Policies, Procedures and Facilities. Examples include, but are not limited to, programs that:~~]

[~~(A) Support mandatory progressive sanctions for misconduct and delinquent behavior.~~]

[~~(B) Develop and maintain computer-based information systems that will match children and families with appropriate service providers based on risk and needs profiles.~~]

[~~(C) Provide appropriate dispositions to mentally ill or mentally retarded youth accused of committing crimes.~~]

[~~(D) Target female and special needs offenders.~~]

(b) Juvenile justice projects or [~~Additionally,~~] projects [~~exclusively~~] serving delinquent [~~juveniles~~] or at-risk youth, regardless of the funding source, must address Disproportionate Minority Contact (DMC) with [~~the representation of minority youth in~~] the juvenile justice system. DMC exists when the proportion of youths referred to the juvenile probation department who are members of minority groups exceed their group's proportion in the general population. "Minority" means African-Americans, Asian-Americans, Hispanic-Americans, and Native Americans. Methods of addressing this requirement include, but are not limited to, identifying and supporting [~~early~~] prevention [~~projects~~] and intervention strategies that could effectively reduce DMC [~~projects designed to divert juveniles from the juvenile justice system in appropriate cases~~].

(c) Applicants that operate adult jails, lockups, secure juvenile detention facilities or secure juvenile correctional facilities that are not in compliance with Title II, Part B, §223(a)(11), (12), and (13) of the Juvenile Justice and Delinquency Prevention Act of 2002 [~~1974~~], Public Law 107-273 [~~93-415~~], 42 U.S.C. 5601 et seq., as amended, are not eligible for funding, unless they have submitted to CJD an acceptable plan and timetable for eliminating the noncompliance.

§3.55. Legal Services for Adult Offenders [~~Criminal Justice Projects~~].

[~~(a) CJD may award grants to support a wide range of projects designed to reduce crime and improve the criminal and juvenile justice systems.~~]

[~~(b) CJD will limit funding for community-based alternative projects to grantees that document problems and needs not already addressed by other state agencies.~~]

[~~(c) Projects may not use grant funds to serve adult offenders charged with, given deferred adjudication for, or convicted of violent or other serious crimes including murder, arson, robbery, sexual assault, aggravated sexual assault, burglary, felony drug crimes, crimes against children, kidnapping, aggravated kidnapping, and manslaughter, unless the executive director grants an exception. The executive director may only approve exceptions to this prohibition in the following instances:~~]

[~~(1) projects that serve offenders between 17 and 25 years old;~~]

[~~(2) projects that fund batterers' intervention programs;~~]

[~~(3) projects that support drug treatment and prevention programs; or~~]

[(4) innovative projects in prisons, jails, and community supervision and corrections departments.]

[(d)] CJD will not fund projects that provide legal services for adult offenders.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
Assistant General Counsel
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DIVISION 2. GRANT BUDGET REQUIREMENTS

1 TAC §§3.75, 3.77, 3.79, 3.81, 3.83, 3.85

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.75. Personnel.

(a) CJD will determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary. In determining reasonableness, the following rules apply:

(1) Salaries for grant-funded positions must comply with the grantee's or applicant's salary classification schedule for employees of the applicant agency. Salaries for persons assigned to the grant project from agencies other than the applicant must be reimbursed in accordance with the assigning agency's salary classification schedule.

(2) If the applicant or assigning agency does not have a classification schedule, then the proposed salary must be commensurate with that paid for similar work in other activities of the applicant or assigning agency. In cases where such work is not found within the applicant or assigning agency, CJD will consider reasonableness based on that paid for similar work in the labor market in which the applicant or assigning agency competes for the kind of employees involved.

(3) CJD will not pay any portion of the salary of, or any other compensation for, an elected or appointed government official. Grants that fund juvenile courts or drug courts, regardless of the funding source, [under the Juvenile Accountability Block Grant Program] are exempt from this subsection [when the grant funds are used to provide court masters, magistrates, or referees who are retained, appointed, or hired to assist judges in juvenile cases].

(b) Personnel compensated with grant funds must maintain on file personnel activity reports that reflect a distribution of actual time worked and activity performed, that are prepared at least monthly, and that are signed by the employee and a supervisory official having first hand knowledge of the work performed by the employee. Law enforcement and prosecution grant personnel whose primary function is investigating or enforcing laws or prosecuting alleged offenders are required to include the project's case or cause number (or other indicators of assignment) in the personnel activity report.

(c) Grantees may not use grant funds to provide overtime pay. Overtime pay is remuneration for hours worked in excess of full-time on a CJD grant project. Grants under the [Extraordinary Costs of Investigating and Prosecuting Capital Murder and Hate Crimes Program, the] Drug Court Program, and the Local Law Enforcement Block Grant Program, are exempt from this subsection [rule]. Grants under the Byrne Formula Grant Program are exempt from this subsection and instead CJD may approve requests to pay overtime in accordance with agency policy only for law enforcement officers assigned to a multi-jurisdictional task force and only from program income that is not used toward the minimum cash match requirement.

(d) Grantees may not carry forward accrued leave from one grant period to another. In accordance with a grantee's or subgrantee's policy, grantees may use grant funds to compensate staff members leaving employment for accrued leave, (which includes, but is not limited to, annual leave, compensatory time, and sick leave). These payments may only fund leave earned during the current grant period. The proportion of grant funds paid for leave cannot exceed the proportion of grant funds used to pay the staff member's salary.

[(e) For Byrne Formula Grant Program projects, CJD may approve requests to pay overtime in accordance with agency policy only for law enforcement officers assigned to a multi-jurisdictional task force and only from program income that is not used toward the minimum cash-match requirement.]

§3.77. Professional and Contractual Services.

(a) Any contract or agreement entered into by a grantee that obligates grant funds must be in writing and consistent with Texas contract law.

(b) Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

(c) Grantees must establish a contract administration system to regularly and consistently ensure that contract deliverables are being provided as specified in the contracts. Grantees must regularly and consistently document the results of their contract monitoring reviews and must maintain the files and results of all contract monitoring reviews in accordance with the record retention requirements described in §3.2505 of this chapter [In accordance with §3.2013 of this chapter, grantees must submit to CJD a CJD-prescribed Procurement Questionnaire when a procurement is expected to exceed $100,000 or upon CJD request].

(d) A grantee's failure to monitor its contracts may result in disallowed costs and/or disallowed match.

(e) In accordance with §3.2013 of this chapter, grantees must submit to CJD a CJD-prescribed Procurement Questionnaire when a procurement is expected to exceed $100,000 or upon CJD request.

§3.79. Transportation, Travel, and Training.

(a) Grant funds used for travel expenses must be limited to the grantee agency's established mileage, per diem, and lodging policies. Federal regulations applicable to the relevant funding source may limit

mileage reimbursement rates. If a grantee does not have established mileage, per diem, and lodging policies, then the grantee must use state travel guidelines. Funds requested by multi-jurisdictional task forces for meals and lodging are allowable only for travel to points at least 50 miles from the grantee agency's headquarters.

(b) Grantees using grant funds to develop and conduct training may not use grant funds to pay for transportation, lodging, per diem, or any related costs for participants. Crime Stoppers training projects and S.T.O.P. Violence Against Women Act Fund projects are exempt from this subsection [~~rule~~].

(c) A person attending training courses paid for with grant funds must complete the course. Grantees must maintain records that properly document the completion of all grant-funded training courses.

§3.81. Equipment.

(a) Applicants must submit with their grant applications an itemized list of all proposed equipment purchases to CJD for approval. Grantees must request any additional equipment purchases through grant adjustments. Grantees are not authorized to purchase any equipment until they have received written approval to do so from CJD through the original grant award or a subsequent grant adjustment notice. Decisions regarding equipment purchases are made based on whether or not the grantee has demonstrated that the requested equipment is necessary, essential to the successful operation of the grant project, and reasonable in cost.

(b) CJD will not approve grant funds to purchase vehicles or equipment for governmental agencies that are for general agency use. The Local Law Enforcement Block Grant program and the County Essential Services Grant program are exempt from this subsection [~~rule~~].

(c) CJD will not approve grant funds for the purchase of weapons, ammunition, explosives, or military vehicles.

(d) In accordance with §3.2013 of this chapter, grantees must submit to CJD a CJD-prescribed Procurement Questionnaire when a procurement is expected to exceed $100,000 or upon CJD request.

§3.83. Supplies and Direct Operating Expenses.

(a) Supplies and direct operating expenses are costs directly related to the grantee's day-to-day operation of the grant project that are not included in any of the grantee's other approved budget categories, as defined in §3.3(10) [~~§3.3(11)~~] of this chapter, and that have an acquisition cost of less than $1,000 per unit. Grantees must allocate costs on a prorated basis for shared usage.

(b) CJD will not approve grant funds to purchase:

(1) admission fees or tickets to any amusement park, recreational activity, or sporting event; or

(2) promotional gifts.

(c) Unless otherwise allowed by this chapter, grantees cannot use grant funds to pay for food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and that event is not related to amusement and/or social activities in any way.

(d) Grant funds shall not be used to pay membership dues for individuals.

§3.85. Indirect Costs.

(a) CJD may approve indirect costs in an amount not to exceed two percent of the CJD-approved direct costs in the CJD-funded portion of a grant project, unless the grantee has an approved cost-allocation plan.

(b) If the applicant has a cost-allocation plan and wishes to charge indirect costs to the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application to CJD.

(c) Unless otherwise specified under Subchapter C, indirect costs are allowable under CJD grants in accordance with applicable state and federal guidelines.

(d) The Juvenile Accountability Block Grant Program is exempt from this section [~~rule~~] and instead must comply with §3.1209 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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SUBCHAPTER C. FUND-SPECIFIC GRANT POLICIES

DIVISION 1. STATE CRIMINAL JUSTICE PLANNING (421) FUND

1 TAC §3.103, §3.111

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.103. Project Requirements.

Grant applications must:[~~meet the rules set forth in §3.53 or §3.55 of this chapter.~~]

(1) focus on reducing crime and improving the criminal and juvenile justice systems; and

(2) meet the requirements of §3.53 of this chapter.

§3.111. Ineligible Activities[~~Renovation and Retrofitting~~].

Grantees may not use grant funds to pay for serving adult offenders charged with, given deferred adjudication for, or convicted of, violent or other serious crimes including murder, arson, robbery, sexual assault, aggravated sexual assault, burglary, felony drug crimes, crimes against children, kidnapping, aggravated kidnapping, and manslaughter, unless the executive director grants an exception. The executive director may approve exceptions to this prohibition. [~~CJD may approve grants for the renovation or retrofitting of existing facilities that~~

~~provide additional beds for juvenile detention in compliance with the Texas Family Code.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FUND

1 TAC §§3.201, 3.203, 3.211

The amendment and addition of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.201. Source and Purpose.

(a) All rules in this division relate to the Juvenile Justice and Delinquency Prevention Act Fund. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Juvenile Justice and Delinquency Prevention Act of 2002 [~~1974, as amended~~], Public Law 107-273 [~~93-415~~],[~~codified as amended at~~] 42 U.S.C. 5601 et seq., as amended. All grants awarded from this fund must comply with the requirements contained therein.

(c) In addition to the rules related to this funding source contained in this chapter, applicants and grantees must comply with the federal regulations at 28 C.F.R. §31, which are hereby adopted by reference.

(d) The purpose of this grant program is to develop more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.

§3.203. Project Requirements.

(a) Projects must meet the requirements of §3.53 of this chapter.

(b) Grant funds can support projects to prevent juvenile delinquency including:

(1) Community Based Alternatives to Incarceration. This includes projects that serve youth who need temporary placement such as crisis intervention, shelter, and after-care; and projects that serve youth who need residential placement such as a continuum of foster care or group home alternatives that provide access to a comprehensive array of services.

(2) Strengthening Families. This includes community based programs and services that work with:

(A) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

(B) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the familes; and

(C) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability.

(3) Collaboration of Local Systems. This includes programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services.

(4) Treatment for Victims. This includes programs that provide treatment to juvenile offenders who are the victims of child abuse or neglect, and to their families, in order to reduce the likelihood that such offenders will commit subsequent violations of law.

(5) Educational Programs and Supportive Services. This includes programs that:

(A) encourage juveniles to remain in elementary or secondary schools or in alternative learning situations;

(B) provide services to assist juveniles in making the transition to the world of work and self-sufficiency; and

(C) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that:

(i) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

(ii) information regarding any learning problems identified in such alternative learning situations are communicated to the schools.

(6) Probation. This includes programs that expand the use of probation officers to address the following:

(A) permitting nonviolent juvenile offenders (including status offenders) to remain at home with their families as an alternative to incarceration or institutionalization; and

(B) ensuring juveniles follow the terms of their probation.

(7) Counseling, Training, and Mentoring. This includes programs in support of academic tutoring, vocational and technical training, and drug and violence prevention counseling that are designed to link at-risk juveniles, juvenile offenders, or juveniles who have a parent who is or was incarcerated, with responsible individuals who are properly trained.

(8) Learning Disabilities. This includes programs that are designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training

programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other juveniles with disabilities.

(9) Gangs. This includes programs designed to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth.

(10) Drug Treatment. This includes programs designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or non-addictive drugs.

(11) Positive Youth Development. This includes programs that promote positive youth development by assisting delinquent and other at-risk youth in obtaining a sense of safety and structure; a sense of belonging and membership; a sense of self-worth and social contribution; a sense of independence and control over life; and, a sense of closeness in interpersonal relationships.

(12) Diversion. This includes programs that encourage the courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting.

(13) Language and Other Barriers. This includes programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and other barriers that may prevent the complete treatment of juveniles and the preservation of their families.

(14) Hate Crimes. This includes programs designed to prevent and to reduce hate crimes committed by juveniles.

(15) After-School Programs. This includes after-school programs that provide at-risk juveniles and juveniles in the juvenile justice system with a range of age-appropriate activities, including tutoring, mentoring, and other educational and enrichment activities.

(16) Post-Placement Services to Adjudicated Juveniles. This includes community based programs that provide follow-up and post-placement services to adjudicated juveniles, to promote successful reintegration into the community.

(17) Protect the Rights of Juveniles. This includes programs designed to protect the rights of juveniles affected by the juvenile justice system.

(18) Mental Health Services for Incarcerated Juveniles. This includes programs designed to provide mental health services for incarcerated juveniles suspected to be in need of such services, including assessment, development of individualized treatment plans, and discharge plans.

§3.211. Ineligibile Activities and Costs.

Grantees may not use grant funds to pay for the following services, activities, and costs:

(1) construction;

(2) medical services;

(3) fundraising activities;

(4) lobbying activities; and

(5) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
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Office of the Governor
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DIVISION 3. TITLE V DELINQUENCY PREVENTION ACT FUND

1 TAC §§3.301, 3.303, 3.305, 3.313

The amendment and addition of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.301. Source and Purpose.

(a) All rules in this division relate to the Title V Delinquency Prevention Act Fund. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Juvenile Justice and Delinquency Prevention Act of 2002 [~~1974~~], Title V, Public Law 107-273, [~~93-415 as amended; Public Laws 102-586 and 104-316; codified as amended at~~] 42 U.S.C. 5781 et seq., as amended. All grants awarded from this fund must comply with the requirements contained therein.

(c) The program's purpose is [~~Projects funded through this program should seek~~] to reduce juvenile delinquency and youth violence by supporting communities in providing their [~~community efforts to provide~~] children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster a healthy and nurturing [~~create an~~] environment that supports the growth and [~~fosters the~~] development of productive and responsible citizens.

§3.303. Project Requirements.

Projects must:

(1) meet the requirements of §3.53 of this chapter;

(2) provide juvenile [~~form coalitions within communities that mobilize and direct~~] delinquency prevention programs and activities for youth who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including: [~~efforts;~~]

(A) alcohol and substance abuse prevention services;

(B) tutoring and remedial education;

(C) child and adolescent health and mental health services;

(D) recreation services;

(E) leadership and youth development activities;

(F) teaching accountability;

(G) assistance in the development of job training; and

(H) other data-driven evidence based prevention programs.

[(3) identify known delinquency risk factors present in affected communities;]

[(4) identify protective measures that counter identified risks and develop local comprehensive delinquency prevention plans that strengthen these protective measures;]

[(5) develop local, comprehensive delinquency prevention strategies that coordinate federal, state, local, and private resources to establish a client-centered continuum of services for at-risk children and their families; and]

[(6) implement delinquency prevention strategies, monitor their progress, and modify the strategies as needed.]

§3.305. Eligible Applicants.

[(a)] Units of local government are eligible to apply for grants under this fund. For this fund, a unit of local government means any city, county, town, village, or other general purpose political subdivision of the state, and any Indian tribe which performs law enforcement functions as determined by the U.S. Secretary of the Interior.

[(b) Before an applicant may receive the CJD-funded portion of a grant project, the applicant must have a local policy board that will direct the project and develop a three-year delinquency prevention plan.]

§3.313. Prevention Policy Board.

Before an applicant may receive the CJD-funded portion of a grant project, the applicant must have a local prevention policy board that will direct the project and develop a three-year delinquency prevention plan. The plan serves as the project narrative and must follow the general format for a project narrative as outined in the grant application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. SAFE AND DRUG-FREE SCHOOLS AND COMMUNITIES ACT FUND

1 TAC §3.401, §3.403

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.401. Source and Purpose.

(a) All rules in this division relate to the Safe and Drug-Free Schools and Communities Act Fund. The funding agency for the source of these federal funds is the U.S. Department of Education. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Elementary and Secondary Education Authorization Act, Title IV, Part A, Subpart 1, §§4001-4117, 20 U.S.C. 7101 et seq., as amended [, Public Law 107-110]. All grants awarded from this fund must comply with the requirements contained therein.

(c) In addition to the rules related to this funding source contained in this chapter, applicants and grantees must comply with the federal regulations at 34 C.F.R. §76, which are hereby adopted by reference [CJD awards these funds to a wide range of state and local applicants, both public and private nonprofit, to promote a safe and drug-free learning environment and to support academic achievement].

(d) The purpose of this grant program is to implement the following drug and violence prevention services: [In addition to the rules related to this funding source contained in this chapter, applicants and grantees must comply with the federal regulations at 34 C.F.R. §76, which are hereby adopted by reference.]

(1) complementing and supporting local educational agency activities, including developing and implementing activities to prevent and reduce violence associated with prejudice and intolerance;

(2) disseminating information about drug and violence prevention;

(3) developing and implementing community-wide drug and violence prevention planning and organizing;

(4) fostering a safe and drug-free learning environment that supports academic achievement;

(5) preventing and reducing violence; the use, possession and distribution of illegal drugs; and delinquency;

(6) creating a well disciplined environment conducive to learning; and

(7) promoting the involvement of parents.

§3.403. Project Requirements.

(a) Projects must meet the requirements of §3.53 of this chapter. [Grant funds will be awarded based on:]

[(1) the quality of the project proposed; and]

[(2) how the project meets the principles of effectiveness described in subsection (e) of this section.]

(b) Priority is given [CJD gives priority] to projects that prevent illegal drug use and violence for:

(1) children and youth who are not normally served by state educational agencies or local educational agencies; or

(2) populations that need special services or additional resources (such as youth in juvenile detention facilities, runaway or homeless children and youth, pregnant and parenting teenagers, and school dropouts).

(c) Special [~~CJD gives special~~] consideration is given to grantees that pursue a comprehensive and collaborative approach to drug and violence prevention that includes providing and incorporating mental health services related to drug and violence prevention in their project.

(d) Projects must meet the following principles of effectiveness [~~Grant funds shall be used to implement drug and violence prevention activities, including~~]:

(1) be based on an assessment of objective data regarding the incidence of violence and illegal drug use in the elementary schools and secondary schools and communities to be served, including an objective analysis of the current conditions and consequences regarding violence and illegal drug use, including delinquency and serious discipline problems among students who attend such schools (including private school students who participate in the drug and violence prevention program) that is based on on-going local assessment or evaluation activities [~~that complement and support local educational activities, including developing and implementing activities to prevent and reduce violence associated with prejudice and intolerance~~];

(2) be based on an established set of performance measures aimed at ensuring that the elementary schools, secondary schools, and communities to be served by the program have a safe, orderly, and drug-free learning environment [~~dissemination of information about drug and violence prevention~~]; [~~and~~]

(3) be based on scientifically-based research that provides evidence that the program to be used will reduce violence and illegal [~~development and implementation of community-wide~~] drug use; [~~and violence prevention planning and organizing.~~]

(4) be based on an analysis of the data reasonably available at the time, of the prevalence of risk factors, including high or increasing rates of reported cases of child abuse and domestic violence; protective factors, buffers, assets; or other variables in schools and communities in the State identified through scientifically-based research; and

(5) include meaningful and ongoing consultation with and input from parents in the development of the application and administration of the program or activity.

(e) Grant funds can support projects that provide [~~Projects must meet~~] the following services, activities or costs [~~principles of effectiveness~~]:

(1) age appropriate and developmentally based activities that: [~~Projects must be based on an assessment of objective data regarding the incidence of violence and illegal drug use in the elementary schools and secondary schools and communities to be served, including an objective analysis of the current conditions and consequences regarding violence and illegal drug use, including delinquency and serious discipline problems, among students who attend such schools (including private school students who participate in the drug and violence prevention program) that is based on on-going local assessment or evaluation activities;~~]

(A) address the consequences of violence and the illegal use of drugs, as appropriate;

(B) promote a sense of individual responsibility;

(C) teach students to recognize social and peer pressure to use drugs illegally and the skills for resisting illegal drug use;

(D) engage students in the learning process; and

(E) incorporate activities in secondary schools that reinforce prevention activities implemented in elementary schools.

(2) activities that involve families, community sectors (which may include appropriately trained seniors), and a variety of drug and violence prevention providers in setting clear expectations against violence and illegal use of drugs and appropriate consequences for violence and illegal use of drugs. [~~Projects must be based on an established set of performance measures aimed at ensuring that the elementary schools, secondary schools, and communities to be served by the program have a safe, orderly, and drug-free learning environment;~~]

(3) dissemination of drug and violence prevention information to schools and the community. [~~Projects must be based on scientifically-based research that provides evidence that the program to be used will reduce violence and illegal drug use;~~]

(4) professional development and training for, and involvement of, school personnel, pupil services personnel, parents, and interested community members in prevention, education, early identification and intervention, mentoring, or rehabilitation referral, as related to drug and violence prevention. [~~Projects must be based on an analysis of the data reasonably available at the time, of the prevalence of risk factors, including high or increasing rates of reported cases of child abuse and domestic violence; protective factors, buffers, assets; or other variables in schools and communities in the State identified through scientifically-based research; and~~]

(5) drug and violence prevention activities that may include the following: [~~Projects must include meaningful and ongoing consultation with and input from parents in the development of the application and administration of the program or activity.~~]

(A) community-wide planning and organizing activities to reduce violence and illegal drug use, which may include gang activity prevention.

(B) acquiring and installing metal detectors, electronic locks, surveillance cameras, or other related equipment and technologies.

(C) reporting criminal offenses committed on school property.

(D) developing and implementing comprehensive school security plans or obtaining technical assistance concerning such plans, which may include obtaining a security assessment or assistance from the School Security and Technology Resource Center at the Sandia National Laboratory located in Albuquerque, New Mexico.

(E) supporting safe zones of passage activities that ensure that students travel safely to and from school, which may include bicycle and pedestrian safety programs.

(F) the hiring and mandatory training, based on scientific research, of school security personnel (including school resource officers) who interact with students in support of youth drug and violence prevention activities under this part that are implemented in the school.

(G) expanded and improved school-based mental health services related to illegal drug use and violence, including early identification of violence and illegal drug use, assessment, and direct or group counseling services provided to students, parents, families, and school personnel by qualified school-based mental health service providers.

(H) conflict resolution programs, including peer mediation programs that educate and train peer mediators and a designated faculty supervisor, and youth anti-crime and anti-drug councils and activities.

(I) alternative education programs or services for violent or drug abusing students that reduce the need for suspension or expulsion or that serve students who have been suspended or expelled from the regular educational settings, including programs or services to assist students to make continued progress toward meeting the State academic achievement standards and to reenter the regular education setting.

(J) counseling, mentoring, referral services, and other student assistance practices and programs, including assistance provided by qualified school-based mental health services providers and the training of teachers by school-based mental health services providers in appropriate identification and intervention techniques for students at risk of violent behavior and illegal use of drugs.

(K) programs that encourage students to seek advice from, and to confide in, a trusted adult regarding concerns about violence and illegal drug use.

(L) drug and violence prevention activities designed to reduce truancy.

(M) age-appropriate, developmentally-based violence prevention and education programs that address victimization associated with prejudice and intolerance, and that include activities designed to help students develop a sense of individual responsibility and respect for the rights of others, and to resolve conflicts without violence.

(N) consistent with the fourth amendment to the Constitution of the United States, the testing of a student for illegal drug use or the inspecting of a student's locker for weapons or illegal drugs or drug paraphernalia, including at the request of or with the consent of a parent or legal guardian of the student, if the local educational agency elects to so test or inspect.

(O) emergency intervention services following traumatic crisis events, such as a shooting, major accident, or a drug-related incident that have disrupted the learning environment.

(P) establishing or implementing a system for transferring suspension and expulsion records, consistent with §444 of the General Education Provisions Act, 20 U.S.C. 1232g, by a local educational agency to any public or private elementary school or secondary school.

(Q) developing and implementing character education programs, as a component of drug and violence prevention programs, that take into account the view of parents of the students for whom the program is intended and such students.

(R) establishing and maintaining a school safety hotline.

(S) community service, including community service performed by expelled students, and service-learning projects.

(T) conducting a nationwide background check of each local educational agency employee, regardless of when hired, and prospective employees for the purpose of determining whether the employee or prospective employee has been convicted of a crime that bears upon the employee's fitness to be responsible for the safety or well-being of children; to serve in the particular capacity in which the employee or prospective employee is or will be employed; or to otherwise be employed by the local educational agency.

(U) programs to train school personnel to identify warning signs of youth suicide and to create an action plan to help youth at risk of suicide.

(V) programs that respond to the needs of students who are faced with domestic violence or child abuse.

(6) the evaluation of any of the activities authorized under this funding source and the collection of objective data used to assess program needs, program implementation, or program success in achieving program goals and objectives.

(f) Projects must not duplicate the efforts of the Texas Education Agency's Safe and Drug-Free Schools Act program or those of local education agencies with regard to the provision of school-based drug and violence prevention activities [~~meet the requirements of §3.53 of this chapter~~].

(g) Projects must undergo a periodic evaluation to assess its progress toward reducing violence and illegal drug use in schools to be served. The results shall be used to refine, improve, and strengthen the program, and to refine the performance measures, and shall also be made available to the public upon request, with public notice of such availability provided. Performance measures, described in the Safe and Drug-Free Schools and Community Act, §4114(d)(2)(B), consist of: [~~not duplicate the efforts of the Texas Education Agency's Safe and Drug-Free Schools Act program or those of local education agencies.~~]

(1) performance indicators for drug and violence prevention programs and activities including:

(A) specific reductions in the prevelance of identified risk factors; and

(B) specific increases in the prevalence of protective factors, buffers, or assets if any have been identified; and

(2) levels of performance for each performance indicator.

[~~(h) Projects must undergo a periodic evaluation to assess its progress toward reducing violence and illegal drug use in schools to be served based on performance measures described in the No Child Left Behind Act of 2001, Public Law 107-110, §4114(d)(2)(B). The results shall be used to refine, improve, and strengthen the program, and to refine the performance measures, and shall also be made available to the public upon request, with public notice of such availability provided.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 5. VICTIMS OF CRIME ACT FUND

1 TAC §§3.501, 3.503, 3.505, 3.511

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.501. Source and Purpose.

(a) All rules in this division relate to the Victims of Crime Act Fund. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601, et seq. All grants awarded from this fund must comply with the requirements contained therein.

(c) The primary purpose of these grants is to provide services to victims of crime. In this division, "services" are defined as those efforts that [~~Services may include the following~~]:

(1) respond [~~responding~~] to the emotional and physical needs of crime victims;

(2) assist [~~assisting~~] victims in stabilizing their lives after a victimization;

(3) assist [~~assisting~~] victims to understand and participate in the criminal justice system; and

(4) provide [~~providing~~] victims with safety and security.

§3.503. Project Requirements.

Grant funds can support [~~projects that provide~~] the following services, activities, and costs:

(1) Immediate Health and Safety. Projects should provide services that respond to the immediate emotional and physical needs (excluding medical care) of crime victims, such as crisis intervention, accompanying victims to hospitals for medical examinations, providing victims with hot line counseling, emergency food, clothing, transportation, and shelter, and providing emergency services intended to restore the victim's sense of security.

(2) Mental Health Assistance. These services include aid that assists the primary and secondary victims of crime.

(3) Assistance with Participation [~~Involvement~~] in Criminal Justice Proceedings. Projects should help victims participate in the criminal justice system.

(4) Forensic Examinations. Forensic examinations are allowable costs only for sexual assault victims and only to the extent that other funding sources are unavailable or insufficient to pay for the examinations. The examinations must conform to state evidentiary collection requirements.

(5) Costs Necessary and Essential to Providing Direct Services. These include prorated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for service providers.

(6) Special Services. These include services to assist crime victims with managing practical problems created by victimization including the following:

(A) acting on behalf of the victim with other service providers, creditors, or employers;

(B) assisting the victim to recover property retained as evidence;

(C) assisting in filing for compensation benefits; and

(D) helping the victim to apply for public assistance.

(7) Personnel Costs. These include costs directly related to providing services such as staff salaries and fringe benefits and including malpractice insurance, costs for advertising to recruit grant-funded personnel, and costs to train paid and volunteer staff.

(8) Restorative Justice [~~Victim-Offender Meetings~~]. Opportunities for crime victims to meet with [~~Activities involving victim-offender meetings are only allowable if the meetings are between the victim and~~] the offender who perpetrated the crime against the victim, if such meetings are requested or voluntarily agreed to by the victim and have possible beneficial or therapeutic value to crime victims.

(9) Other Allowable Costs and Services. CJD does not consider the following services, activities, and costs [~~listed below~~] as direct crime victim services, but recognizes that they are often an essential activity necessary to ensure that the grantee can provide high quality direct services. Before grantees can use grant funds to pay for these services, activities, and costs, CJD and the grantee must agree that the grantee cannot provide direct services to crime victims without additional support for the expenses, that the grantee has no other source of pecuniary support for them, and that the grantee will limit the use of grant funds in paying for them. These services, activities, and costs include:

(A) Skill training for staff. Grant funds designated for training shall be used exclusively for developing the skills of direct service providers [~~This includes the cost of training materials~~].

(B) Training [~~programs~~] and related travel for staff. This includes the cost of travel, meals, lodging and registration fees for staff that provide direct services to victims of crime.

(C) Equipment and furniture.

(D) Purchase or lease [~~Lease~~] of vehicles. Grantees must obtain CJD approval in writing before purchasing or leasing vehicles.

(E) Advanced technologies. This covers information technology costs associated with purchasing systems, software, or equipment that expand a grantee's ability to reach and serve crime victims.

(F) Contracts for specialized professional services. Grantees may not use a majority of grant funds for contracted services that provide administrative, overhead, and other indirect costs. Examples of specialized professional services include the following:

(i) assistance in filing restraining orders or establishing emergency custody or visitation rights;

(ii) emergency psychological or psychiatric services; or

(iii) interpretation for the deaf or for crime victims whose primary language is not English.

(G) Operating costs.

(H) Supervision of direct service providers.

(I) Repair or replacement of essential items.

(J) Training materials for staff.

(K) Public Presentations. Grant funds may be used to support presentations that are made in schools, community centers, or other forums, that are designated to identify crime victims and provide or refer them to needed services.

§3.505. Eligible Applicants.

(a) The following applicants are eligible to apply for grants under this fund: state [~~State~~] agencies;[~~,~~] units of local government;[~~,~~] hospital districts;[~~,~~] nonprofit corporations;[~~,~~] Native American tribes;[~~,~~] crime control and prevention districts;[~~,~~] universities;[~~,~~] colleges;[~~,~~] community supervision and corrections departments;[~~,~~] COGs that provide [~~offer~~] direct services to victims;[~~,~~] faith-based organizations that provide direct services to victims of crime;[~~,~~] and hospitals and emergency medical facilities that offer crisis counseling, support groups, and/or other types of victim services [~~are eligible to apply for grants under this fund~~]. Faith-based organizations must be certified by the Internal Revenue Service as tax-exempt nonprofit entities. Grantees may not use grant funds or program income for proselytizing or sectarian worship. In-patient treatment facilities, such as those designated to provide treatment to individuals with drug, alcohol, or mental health-related conditions, are not eligible to apply for grant funds.

(b) All applicants must [~~meet one of the following criteria~~]:

(1) Demonstrate [~~the applicant has~~] a record of providing effective services to crime victims. If the applicant cannot yet demonstrate a record of providing effective services, the applicant must demonstrate that at least 25 percent of its financial support comes from non-federal sources.[~~; or~~]

(2) Utilize volunteers, unless CJD determines that a compelling reason exists to waive this requirement [~~if an applicant does not have a demonstrated record of providing such services, it must show that at least 25 percent of its financial support comes from non-federal sources~~].

(3) Promote community efforts to aid crime victims. Applicants should promote, within the community, coordinated public and private efforts to aid crime victims. Coordination efforts qualify an organization to receive VOCA funds, but are not activities that can be supported with VOCA funds.

(4) Assist victims in applying for crime victims' compensation benefits.

(5) Maintain civil rights information. This requirement includes maintaining statutorily required civil rights statistics on the race, national origin, sex, age, and disability of victims served, within the timeframe established by CJD. This requirement is waived when providing service, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

(6) Provide equal services to victims of federal crimes.

(7) Provide grant-funded services at no charge to victims. Any deviation requires prior written approval by CJD.

(8) Maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.

~~[(c) All applicants must meet each of the following criteria:]~~

~~[(1) applicants must use volunteers, unless CJD determines that a compelling reason exists to grant an exception;]~~

~~[(2) applicants must promote community efforts to aid crime victims;]~~

~~[(3) applicants must help victims apply for compensation benefits;]~~

~~[(4) applicants must maintain and display civil rights information;]~~

~~[(5) applicants must provide services to victims of federal crimes on the same basis as victims of state and local crimes;]~~

~~[(6) applicants must provide grant-funded services at no charge to victims, and any deviation requires prior written approval by CJD; and]~~

~~[(7) applicants must maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.]~~

§3.511. Ineligible Activities and Costs.

Grantees may not use grant funds to pay for the following services, activities, and costs:

(1) lobbying and administrative advocacy;

(2) perpetrator rehabilitation and counseling or services to incarcerated individuals;

(3) needs assessments, surveys, evaluations, and studies;

(4) prosecution activities;

(5) fundraising activities;

(6) reimbursing crime victims for expenses incurred as a result of the crime;

(7) Most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergencies), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a victimization [~~crime~~], except for forensic medical examinations for sexual assault victims;

(8) Relocation expenses. Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) Administrative staff expenses. Grantees may not use grant funds to pay salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs;

(10) development of protocols, interagency agreements, and other working agreements;

(11) costs of sending individual crime victims to conferences;

(12) activities exclusively related to crime prevention or community awareness;

(13) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(14) victim-offender meetings that serve to replace criminal justice proceedings;

(15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(16) training to persons or groups outside the applicant agency; however, the grantee may invite staff members from other organizations to attend training activities held for the grantee's staff if the VOCA-related [~~Victims of Crime Act-related~~] project incurs no additional costs;

(17) indirect organization costs such as the following: liability insurance on buildings; major maintenance on buildings; capital improvements; newsletters, including supplies, printing, postage, and staff time; security guards and body guards; and employment agency fees;

(18) any activities or related costs for diligent search;

(19) job skills training; [~~and~~]

(20) alcohol or drug abuse treatment;[~~.~~]

(21) Property loss. Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills; and

(22) non-emergency legal proceedings such as for divorces or civil restitution recovery efforts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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DIVISION 6. CRIME STOPPERS ASSISTANCE FUND

1 TAC §§3.601, 3.609, 3.613

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.601. Source and Purpose.

(a) All rules in this division relate to the Crime Stoppers Assistance Fund. Grants awarded under this fund are state funds. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) The Crime Stoppers Assistance Fund is established by Article 102.013 of the Texas Code of Criminal Procedure.

(c) This funding source provides grants to Crime Stoppers organizations in Texas. CJD intends for the grants to enhance and assist community [~~the affected community's~~] efforts in solving crimes.

§3.609. Indirect Costs.

CJD will not approve the use of grant funds to pay for indirect costs. The executive director may, in his or her discretion, waive the requirements of this section [~~rule~~] for statewide projects.

§3.613. Effect of Decertification or Expiration of Certification [~~Decertified Crime Stoppers Organization~~].

(a) If a grantee [~~that is a crime stoppers organization~~] is decertified by the Crime Stoppers Advisory Council, the grant awarded to the grantee shall terminate on the date on which the grantee is decertified and all unexpended grant funds must be returned to CJD.

(b) If a grantee's certification expires, the grant awarded to the grantee shall terminate on the date on which the grantee's certification expires and all unexpended grant funds must be returned to CJD.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 7. BYRNE FORMULA GRANT PROGRAM

1 TAC §§3.721, 3.723, 3.725

The amendment and addition of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.721. Certification of Drug Testing.

Applications for multi-jurisdictional drug task force projects under the Byrne Formula Grant Program must include a certification of drug testing. This document certifies that 25 percent of all personnel assigned to the project are randomly tested quarterly for illegal narcotics according to grantee policies. Grantees must have a drug testing policy prior to receiving grant funds and must maintain documentation on file evidencing that drug testing was conducted.

§3.723. Multi-jurisdictional Drug Task Force Advisory Boards.

Under the Byrne Formula Grant Program, multi-jurisdictional drug task force advisory boards serve only in an advisory capacity to the task force and the grantee entity. [~~All task force personnel remain the employees of their parent agencies. Task force personnel are not considered employees of the advisory board, the task force, or the Governor's Office (including CJD).~~]

§3.725. Task Force Personnel.

All task force personnel remain the employees of their assigning agencies and are not considered employees of the task force, the multi-jurisdictional drug task force advisory board, the Texas Department of Public Safety, or the Governor's Office (including CJD).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 8. LOCAL LAW ENFORCEMENT BLOCK GRANT PROGRAM

1 TAC §§3.801, 3.803, 3.809, 3.811

The amendment and addition of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.801. Source and Purpose.

(a) All rules in this division relate to the Local Law Enforcement Block Grant Program. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the [~~Local Law Enforcement Block Grants Act of 1995, H.R. 728;~~] Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 2003[~~1998~~], Public Law 108-7[~~105-119, III Stat. 2440, 2452~~].

(c) The program provides funds to projects designed to reduce crime and improve public safety.

§3.803. Project Requirements.

[~~(a)~~] All projects funded through this program must have a regional or statewide impact and must meet at least one of the following purpose areas:

(1) Law enforcement support for:

(A) Hiring, training, and employing on a continuing basis, additional law enforcement officers and necessary support personnel. For the purposes of this program, a law enforcement officer may be police, corrections, probation, parole, or judicial officers.

(B) Paying overtime to currently employed law enforcement officers and necessary support personnel for the purpose of increasing the number of hours worked by such personnel.

(C) Procuring equipment, technology, and other material directly related to basic law enforcement functions.

(2) Enhancing security measures in and around schools, and in and around any other facility or location that the grant recipient considers a special risk for incidents of crime.

(3) Establishing or supporting drug courts. To be eligible for funding, a drug court program must include the following:

(A) Continuing judicial supervision over offenders who are substance abusers, but not violent offenders.

(B) Integrating administration of other sanctions and services which shall include:

(i) mandatory periodic testing of each participant for the use of controlled substances or other addictive substances during any period of supervised release or probation;

(ii) substance abuse treatment for each participant;

(iii) probation or other supervised release that involves the possible prosecution, confinement, or incarceration because of noncompliance with program requirements or failure to show satisfactory progress; and

(iv) programmatic offender management and aftercare services such as relapse prevention, vocational job training, and job and housing placement.

(4) Enhancing the adjudication of cases involving violent offenders, including cases which involve violent juvenile offenders. For the purposes of this program, violent offender indicates a person charged with committing a Part I violent crime (murder, rape, robbery, and aggravated assault) as defined under the Uniform Crime Report (UCR) Program.

(5) Establishing multi-jurisdictional task forces. The task force should concentrate on rural areas and be composed of law enforcement officials who represent units of local government. The task force will work with federal law enforcement officials to prevent and control crime.

(6) Establishing crime prevention programs involving cooperation between community residents and law enforcement personnel to control, detect, or investigate crime or the prosecution of criminals.

(7) Defraying the cost of indemnification insurance for law enforcement officers by supplying insurance for law enforcement officers to cover damage from willful acts to offenders by officers who are lawfully carrying out their duties.

[~~(b) Prohibited uses. Grantees may not use grant funds to purchase, lease, rent, or acquire any of the following:~~]

[~~(1) tanks or armored vehicles;~~]

[~~(2) fixed-wing aircraft;~~]

[~~(3) limousines;~~]

[~~(4) real estate;~~]

[~~(5) yachts;~~]

[~~(6) consultants;~~]

[~~(7) vehicles not primarily used for law enforcement; and~~]

[~~(8) New construction. However, renovations of facilities are permitted when specifically approved by Bureau of Justice Assistance and the Office of the Comptroller. These costs may not exceed 10% of the total federal funds utilized in a given purpose area.~~]

§3.809. Indirect Costs.

CJD will not approve the use of grant funds to pay for indirect costs.

§3.811. Ineligible Activities and Costs.

Grantees may not use grant funds to purchase, lease, rent, or acquire any of the following:

(1) tanks or armored vehicles;

(2) fixed-wing aircraft;

(3) limousines;

(4) real estate;

(5) yachts;

(6) consultants;

(7) vehicles not primarily used for law enforcement; and

(8) New construction. However, renovations of facilities are permitted when specifically approved by Bureau of Justice Assistance and the Office of the Comptroller. These costs may not exceed 10% of the total federal funds utilized in a given purpose area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 9. S.T.O.P. VIOLENCE AGAINST WOMEN ACT FUND

1 TAC §§3.901, 3.903, 3.905

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.901. Source and Purpose.

(a) All rules in this division relate to the S.T.O.P. Violence Against Women Act Fund program. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds were originally authorized under the Violent Crime Control and Law Enforcement Act of 1994; Omnibus Crime Control and Safe Streets Act of 1968, as amended, §2001-6, 42 U.S.C. 3796gg to 3796gg5, and reauthorized under Division B of the Victims of Trafficking and Violence Protection Act of 2000, §1103.

(c) The program's purpose is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

(d) In addition to the rules related to the funding source contained in this chapter, applicants and grantees must comply with the federal regulations in 28 C.F.R. §90, which are hereby adopted by reference.

§3.903. Project Requirements.

(a) Projects must meet at least one of the eligible purpose areas established by the federal Violence Against Women Office and codified at 28 C.F.R. §90.

(b) In addition to subsection (a) of this section, projects must address at least one of the following state priorities developed in coordination with the S.T.O.P.[~~STOP~~] Violence Against Women Planning Council:

(1) Priorities for Victim Services Projects:[.]

(A) Provide essential victim services related to family violence, sexual assault, stalking and dating violence.

(B) Promote outreach and services into under-served communities for family violence, sexual assault, stalking and dating violence.

(C) Provide or improve training for victim advocates.

(D) Establish or maintain a family violence, sexual assault, stalking, and/or dating violence taskforce that promotes a coordinated community response, including multi-jurisdictional efforts.

(2) Priorities for Law Enforcement Projects:[.]

(A) Promote or improve training for law enforcement agencies related to family violence, sexual assault, stalking and dating violence.

(B) Develop specialized family violence, sexual assault, stalking, dating violence and/or victim service divisions within law enforcement agencies.

(C) Collaborate, plan and initiate unified policies among the different law enforcement and social services agencies for family violence, sexual assault, stalking and dating violence.

(D) Establish or maintain a family violence, sexual assault, stalking, and/or dating violence taskforce which promotes a coordinated community response, including multi-jurisdictional efforts.

(3) Priorities for Prosecution Projects:[.]

(A) Develop specialized family violence, sexual assault, stalking, dating violence and/or victim service divisions within prosecutors' offices.

(B) Provide or improve training for prosecution agencies related to family violence, sexual assault, stalking and dating violence.

(C) Promote outreach and services into underserved communities for family violence, sexual assault, stalking and dating violence.

(D) Establish or maintain a family violence, sexual assault, stalking, and/or dating violence taskforce that promotes a coordinated community response, including multi-jurisdictional efforts.

(4) Priorities for Court Projects:[.]

(A) Promote or improve training for judges and court personnel related to family violence, sexual assault, stalking and dating violence.

(B) Provide specialized courts and/or court services aimed at family violence, sexual assault, stalking, and/or dating violence.

(C) Provide in-court victims assistance for family violence, sexual assault, stalking and dating violence victims.

(D) Promote outreach and services into underserved communities related to family violence, sexual assault, stalking and dating violence.

§3.905. Eligible Applicants.

State agencies, units of local government, nonprofit corporations, faith-based organizations, Indian tribal governments, COGs, universities, colleges, community supervision and corrections departments, and crime control and prevention districts[,] are eligible to apply for grants under this fund. Faith-based organizations must be certified by the Internal Revenue Service as tax-exempt nonprofit entities. Grantees may not use grant funds or program income for proselytizing or sectarian worship.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 10. CHALLENGE GRANT PROGRAM

1 TAC §3.1005

The amendment of this rule is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.1005. Eligible Applicants.

State agencies, nonprofit corporations[~~organizations~~], local units of government, faith-based organizations, crime control and prevention districts, Native American tribal governments, COGs, universities, colleges, independent school districts, and juvenile boards are eligible to apply for grants under this fund. Faith-based organizations must be certified by the Internal Revenue Service as tax-exempt nonprofit entities. Grantees may not use grant funds or program income for proselytizing or sectarian worship.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 11. RESIDENTIAL SUBSTANCE ABUSE TREATMENT GRANT PROGRAM

1 TAC §§3.1101, 3.1103, 3.1111

The amendment and addition of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended and added rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment or addition of these rules.

§3.1101. Source and Purpose.

(a) All rules in this division relate to the Residential Substance Abuse Treatment Grant Program (RSAT). The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §1001, as amended, Public Law 90-351, 42 U.S.C. 3796ff, et seq.

(c) The program's[~~Program's~~] purpose is to develop and implement residential substance abuse treatment projects[~~programs~~] within state and local correctional facilities and jail-based substance

abuse projects within jails and local correctional facilities[~~where prisoners are incarcerated for a period of time sufficient to permit effective treatment~~].

§3.1103. Project Requirements.

(a) Grantees must use grant funds to implement residential substance abuse projects that provide individual and group treatment for offenders in residential facilities operated by state and local correctional agencies, or jail-based substance abuse projects that provide individual and group treatment activities for offenders in jails and local correctional facilities.

(b) Residential[~~These~~] substance abuse projects must:

(1) be designed to last[~~ensure that each offender participates in the program~~] for not less than six nor more than 12 months[~~, unless he or she drops out or is terminated~~];

(2) provide treatment in residential treatment facilities that are set apart from the general correctional population[~~or are~~] in a completely separate facility or a dedicated housing unit within a facility for the exclusive use of project[~~program~~] participants;

(3) focus on the substance abuse problems of the inmate;

(4) develop the inmate's cognitive, behavioral, social, vocational, and other skills to resolve the substance abuse and related problems; and

(5) require urinalysis or other reliable methods of drug and alcohol testing for those enrolled in the residential substance abuse project and post program while they remain in the custody of the state or local government.

(c) Jail-based substance abuse projects must:[~~CJD gives preference to applicants who provide aftercare services to program participants. Aftercare services should coordinate service provision between the correctional treatment program and other human service and rehabilitation programs, such as education and job training, parole supervision, halfway houses, and self-help and peer group programs that may aid in rehabilitation. Grantees may not use grant funds to pay for non-residential treatment provided through the aftercare component of the program, except when stipulated through federal regulations.~~]

(1) be designed to last for not less than three months;

(2) make every effort to set apart the treatment population from the general correctional population;

(3) focus on the substance abuse problems of the inmate;

(4) develop the inmate's cognitive, behavioral, social, vocational, and other skills to solve the substance abuse and related problems; and

(5) be science-based and effective.

(d) CJD gives preference to applicants who provide aftercare services to project participants. Aftercare services should coordinate service provisions between the correctional treatment program and other human service and rehabilitation programs such as education and job training, parole supervision, halfway houses, and self-help and peer group projects that may aid in rehabilitation.[~~Grantees shall develop an individualized plan for community substance abuse treatment for each offender when the offender enters a residential treatment program. Corrections treatment projects and state or local substance abuse treatment programs must work together to place program participants in appropriate community substance abuse treatment when these individuals leave the correctional facility at the end of their sentence or their parole.~~]

(e) Grantees shall develop an individualized plan for each offender when the offender enters a residential treatment project. Corrections treatment projects and state or local substance abuse treatment projects must work together to place project participants in appropriate aftercare placement when these individuals complete the program.

§3.1111. Ineligible Activities and Costs.

Grantees may not use grant funds to pay for the following activities and costs:

(1) rent or building leases, except for leases of space for the delivery of treatment services such as offices for counselors and group events;

(2) utilities;

(3) building and lawn maintenance;

(4) insurance;

(5) meals and snacks;

(6) medical and dental care;

(7) vehicle expenses unless for treatment purposes;

(8) uniforms for personnel;

(9) training for continuing education and licensing requirements, unless this benefit is also provided to all non-RSAT funded personnel.

(10) administrative costs;

(11) construction or land acquisition;

(12) services in a private treatment facility; or

(13) aftercare services provided after the project participant is released from the facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
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DIVISION 12. JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM

1 TAC §§3.1201, 3.1203, 3.1205, 3.1211, 3.1213

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.1201. Source and Purpose.

(a) All rules in this division relate to the Juvenile Accountability Block Grant Program. The funding agency for the source of these federal funds is the U.S. Department of Justice. Grantees must comply with the applicable grant management standards adopted under §3.19 of this chapter.

(b) These federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 2002[~~Fiscal Year 1999 Appropriations Act~~], Public Law 107-273, 42 USC 3796ee et seq., as amended[~~105-277 (1998), referencing H.R. 3 (May 3, 1997)~~]. All grants awarded from this fund must comply with the requirements contained therein.

(c) The program's purpose is to develop programs that promote greater accountability in the juvenile justice system.

(d) In addition to the rules related to this funding source contained in this chapter, applicants and grantees must comply with the federal regulations contained in 28 C.F.R. §95, which are hereby adopted by reference.

§3.1203. Project Requirements.

[~~(a)~~] These funds are available to support the following program purpose areas:

(1) Graduated Sanctions. Developing, implementing, and administering graduated sanctions for juvenile offenders[~~building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including training of correctional personnel~~];

(2) Corrections/Detention Facilities. Building, expanding, renovating, or operating temporary or permanent[~~developing and administering accountability-based sanctions for~~] juvenile corrections, or detention facilities, including the training of personnel[~~offenders~~];

(3) Court Staffing and Pretrial Services. Hiring[~~hiring additional~~] juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders[~~juveniles~~], to promote[~~ensure~~] the effective[~~smooth~~] and expeditious administration of the juvenile justice system;

(4) Prosecutors (Staffing). Hiring[~~hiring~~] additional prosecutors so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(5) Prosecutors (Funding). Providing[~~providing~~] funding to enable prosecutors to address drug, gang, and youth violence problems more effectively and for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(6) Training for Law Enforcement and Court Personnel. Establishing[~~providing funding for technology, equipment,~~] and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime[~~assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders~~];

(7) Juvenile Gun Courts. Establishing juvenile gun courts for the prosecution and adjudication of[~~providing funding to enable~~] juvenile firearms[~~courts and juvenile probation offices to be more effective and efficient in holding juvenile~~] offenders[~~accountable and reducing recidivism~~];

(8) Juvenile Drug Courts. Establishing[~~the establishment of~~] drug court [~~court-based~~] programs to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to integrate administration of other sanctions and services for such offenders[~~justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders~~];

(9) Juvenile Records Systems. Establishing and maintaining a system of juvenile records designed to promote public safety[~~the establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services~~];

(10) Information Sharing. Establishing[~~establishing~~] and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems[~~system~~], schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(11) Accountability. Establishing[~~establishing~~] and maintaining accountability-based programs designed to reduce recidivism among juveniles[~~that work with juvenile offenders~~] who are referred by law enforcement personnel or agencies[~~that protect students and school personnel from drug, gang, and youth violence~~];[~~and~~]

(12) Risk and Needs Assessment. Establishing and maintaining programs to conduct risk and need assessments of[~~implementing a policy of controlled substance testing for appropriate categories of juveniles within the~~] juvenile offenders that facilitate the effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment, to such offenders;[~~justice system.~~]

(13) School Safety. Establishing and maintaining accountability-based programs that are designed to enhance school safety;

(14) Restorative Justice. Establishing and maintaining restorative justice programs;

(15) Juvenile Courts and Probation. Establishing and maintaining programs to enable juvenile courts and juvenile probation officers to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism; or

(16) Detention/Corrections Personnel. Hiring detention and corrections personnel, and establishing and maintaining training programs for such personnel, to improve facility practices and programming.

[~~(b) Grantees, except those receiving funds from a state set-aside, are required to distribute 45% of the total grant funds for program purpose areas in subsection (a)(3) through (9) of this section and 35% for program purpose areas in subsection (a)(1), (2), and (10) of this section. The remaining 20% may be used for any combination of the twelve (12) program purpose areas. This distribution requirement may be waived by CJD if the grantee can certify in writing that the interest of public safety and juvenile crime control would be better served by expending its funds in a proportion other than the 45% and 35% minimums.~~]

§3.1205. Eligible Applicants.

(a) Twenty-five percent of this fund is available for state discretionary set-aside grants to state agencies, units of local government (including crime control and prevention districts),[~~universities, colleges, nonprofit corporations,~~] Native American tribal governments, and COGs[~~and faith-based organizations~~]. Discretionary projects are

eligible for funding under subsections (10), (11), (13), and (15) only of §3.1203 of this chapter.[~~Faith-based organizations must be certified by the Internal Revenue Service as tax-exempt nonprofit entities. Grantees may not use grant funds or program income for proselytizing or sectarian worship.~~]

(b) Seventy-five percent of this fund is available for local/regional formula grants to cities and counties based on a formula combining juvenile justice expenditures for each unit of local government and the average annual number of Uniform Crime Report part 1 violent crimes reported for each unit of local government for the three most recent calendar years for which data are available[~~Cities, counties, Native American tribal governments, and COGs that apply for grants to provide services to units of local government that are not eligible for separate grants are eligible to apply for formula allocation grants under the remaining 75 percent of this fund~~].

(1) Cities and counties qualifying for a direct formula allocation of $10,000 or more will receive notice of such allocation.

(2) Cities and counties that do not qualify for the $10,000 minimum local/regional formula allocation grants, and Native American tribal governments and COGs, are eligible to apply for funding to benefit local governments in accordance with a current RFA issued by CJD.

§3.1211. Waiver of Application.

(a) Any entity receiving a local allocation may waive their ability to apply [~~Applicants eligible for formula-based funding may waive applications~~] for funds[~~by submitting a resolution from their governing body listing the amount of money and to whom the funds are being waived~~].[~~These funds can be waived to other cities or counties, COGs, Native American tribal governments, or back to the state.~~]

(b) Funds may be waived to CJD or to another larger or neighboring city, county, or Native American tribe that will still benefit the waiving entities area.

(1) To waive funds to CJD, the entity's governing body must complete and return to CJD the JABG Waiver of Funds Form provided in the grant application kit.

(2) To waive funds to a larger or neighboring city, county, or Native American tribe, the entity's governing body must complete and forward the JABG Waiver of Funds Form to the governing body of the city, county, or Native American tribe intended to receive the funds.

(3) Failure to complete either a grant application or JABG Waiver of Funds Form will result in the local allocation reverting back to CJD.

(c) Cities, counties, and Native American tribes requesting funds through the Juvenile Accountability Block Grant program are responsible for obtaining written authorization from each entity that chooses to waive an allocation.

(d) CJD will not award waived funds to a city, county, or Native American tribe until a signed JABG Waiver of Funds Form is received.

§3.1213. JABG Local Advisory Board[~~Juvenile Crime Enforcement Coalition~~].

(a) Each unit of local government that receives a direct allocation under §3.1205(b)(1)[~~applicant~~] must establish an advisory board[~~a coalition~~] consisting of individuals representing police departments, sheriffs' offices, prosecutors, probation officers, juvenile courts, schools, businesses, and faith-based, fraternal, nonprofit, or social service organizations involved in juvenile crime and delinquency prevention.

(b) The local advisory board must develop a coordinated enforcement plan for the use of grant funds received under §3.1205(b)(1), based on an analysis of the local juvenile justice system needs. The analysis determines the most effective use of grant funds within the sixteen program purpose areas that apply to those grant funds. The plan serves as the project narrative and summary and must follow the general format for a project narrative and summary as outlined in the application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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1 TAC §3.1215

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of this rule is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of this rule.

§3.1215. Coordinated Enforcement Plan for Reducing Juvenile Crime.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
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DIVISION 13. COVERDELL FORENSIC SCIENCES PROGRAM

1 TAC §3.1303

The amendment of this rule is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.1303. Project Requirements.

(a) All projects funded through this program must be accredited by the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors or the National Association of Medical Examiners. In addition, projects must:

(1) Employ one or more full-time scientists[~~criminalists~~] whose principal duties are the examination of physical evidence for law enforcement agencies in criminal justice matters and who provide testimony with respect to such physical evidence to the criminal justice system.

(2) Demonstrate improvement over current operations in the average number of days between submission of a sample to a forensic science laboratory and the delivery of test results to the requesting office or agency.

(3) Assure that all project personnel comply with 28 C.F.R. Part 22 regarding protection of personally identifiable information that may be collected for research or statistical purposes.

(b) Allowable expenditures are limited to the following:

(1) Laboratory and computer equipment including upgrading, replacing, and purchasing laboratory equipment, instrumentation, and computer hardware or software for forensic analyses and data management.

(2) Supplies include laboratory items needed to perform analyses and to conduct validation studies, and other expenses directly attributable to conducting various types of forensic analyses.

(3) Costs associated with personnel, such as overtime, fellowships, visiting scientists, interns, consultants or contracted staff (funds may not be used for salaries or wages for state or local personnel).

(4) Facility improvements including benches, cabinets, interior dividing walls, evidence storage rooms, or extraction rooms when it can be demonstrated that these items will improve the effectiveness and credibility of the laboratory.

(5) Education and training, including internal and external training and continuing education, that is directly applicable to the job position and duties of the individuals receiving the training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
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DIVISION 14. RURAL DOMESTIC VIOLENCE AND CHILD VICTIMIZATION ENFORCEMENT PROGRAM

1 TAC §§3.1401, 3.1403, 3.1405, 3.1409, 3.1411, 3.1413, 3.1415

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The repealed rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

§3.1401. Source and Purpose.
§3.1403. Project Requirements.
§3.1405. Eligible Applicants.
§3.1409. Indirect Costs.
§3.1411. Ineligible Activities.
§3.1413. Grant Period.
§3.1415. Professional and Contractual Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
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SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2007, 3.2009, 3.2013

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which

provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2007. Confidential Funds Certification.

Any applicant proposing a project that may require the expenditure of confidential funds must sign and return with their application a copy of a Confidential Funds Certification. For Byrne Formula Grant Program grants, the rules adopted by reference in §3.19 of this chapter apply to the control and use of confidential funds except where they conflict with the rules in §3.717 of this chapter, in which case the rules in §3.717 of this chapter shall apply.

§3.2009. Cooperative Working Agreement.

(a) When a grantee intends to carry out a grant project through cooperating or participating with one or more outside organizations, the grantee must obtain authorized approval signatures on the cooperative working agreement from each participating organization. Grantees must maintain on file a signed copy of all cooperative working agreements.

(b) Cooperative working agreements do not involve an exchange of funds.

(c) For multi-jurisdictional task force grants under the Byrne Formula Grant Program, a cooperative working agreement must include the signature of each sheriff in a multi-jurisdictional task force's impact area. Counties must be contiguous and the sheriff may not execute a cooperative working agreement with more than one task force project.

(d) Each grantee must submit to CJD a list of each participating organization that has entered into a cooperative working agreement with the grantee and a written description of the purpose of each cooperative working agreement.

(e) Grantees that have statewide jurisdiction to make arrests and execute process in criminal cases are exempt from subsection (c) of this section.

§3.2013. Pre-Approval Requirements for Procurement.

(a) When a procurement is expected to exceed $100,000 or upon CJD request, a grantee must submit to CJD a CJD-prescribed Procurement Questionnaire.

(b) When a procurement is expected to exceed $100,000 or upon CJD request, and one of the following conditions exist, a grantee must submit to CJD all related procurement documentation, such as requests for proposals, invitations for bids, or independent cost estimates, along with a CJD-prescribed Procurement Questionnaire:

(1) the procurement is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(2) the procurement specifies a "brand name" product; or

(3) the proposed contract is to be awarded to an entity other than the apparent low bidder under a sealed bid procurement.

(c) The information required in subsections (a) and (b) of this section must be submitted to CJD before grant funds are obligated or expended.

(d) Grantees may not divide purchases or contracts for the purposes of avoiding the requirements of this section [~~rule~~]. For purposes of determining compliance, CJD will consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§3.2501, 3.2507, 3.2511, 3.2513, 3.2515, 3.2525, 3.2529

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2501. Grant Officials.

(a) Each grant must have three different grant officials:

(1) Project Director. The project director must be an employee of the applicant agency or be from the contractor organization that will be responsible for project operation or monitoring and who will serve as the point-of-contact regarding the project's day-to-day operations. For Crime Stoppers Programs, the project director can be an employee of a law enforcement agency who will act as the coordinator. For Byrne Formula Grant Program projects, the project director shall not be the task force commander;

(2) Financial Officer. The financial officer must be the chief financial officer of the applicant agency. A county auditor, city treasurer, comptroller, or the treasurer of a nonprofit corporation's board may serve as the project's financial officer. The financial officer is responsible for establishing and maintaining financial records to accurately account for funds awarded to the grantee. These records shall include both federal funds and all matching funds of State, local, and private organizations, when applicable. The financial officer is also responsible for requesting funds and reporting grant activity to CJD on expenditure report forms provided to the financial officer; and

(3) Authorized Official. The authorized official must be authorized to apply for, accept, reject, alter, or terminate the grant for the applicant agency. The executive director of a state agency, county judge, mayor, city manager, chairman of a nonprofit board, director of a community supervision and corrections department, or other individual authorized by the governing body may serve as the authorized official. The authorized official must be designated by the governing body in its resolution pursuant to §3.2021 of this chapter.

(b) No person shall serve in more than one capacity as a grant official.

(c) The signature of each grant official must be provided to CJD by the grantee.

(d) The grantee shall make every effort to ensure that each grant official has an e-mail address and access to the Internet.[~~notify CJD in writing of:~~]

[~~(1) any change in the designated project director, financial officer, or authorized official and shall include a sample signature of the new project director, financial officer, or authorized official; and~~]

[~~(2) any change in the grantee's mailing address, email address, fax number, or telephone number.~~]

(e) The grantee shall notify CJD in writing within 20 calendar days of:

(1) any change in the designated project director, financial officer, or authorized official and shall include a sample signature of the new project director, financial officer, or authorized official;

(2) any change in the mailing address, e-mail address, fax number, or telephone number of each grant official; and

(3) any change in the grantee's physical address.

§3.2507. Expenditure Reports.

Each grantee must submit financial expenditure reports to CJD each calendar quarter. CJD will provide the appropriate forms and instructions for the reports along with deadlines for their submission. CJD will place a financial hold on a grantee's funds if the grantee fails to submit timely expenditure reports. Submission of an expenditure report does not generate a grant payment. Section 3.2511 of this chapter[~~, Request for Funds,~~] sets forth rules for requesting payments. The grantee must report program income in the expenditure report including program income earned by the grantee, a vendor or contractor.

§3.2511. Requests for Funds.

(a) After a grant has been accepted and if there are no outstanding special conditions or other deficiencies, a grantee may request funds [~~on a cost reimbursement basis~~] no more than once a month. A grantee may request funds on a cost reimbursement basis or request advanced funds covering no more than the anticipated expenses for the next month. Submission of an expenditure report does not generate a grant payment. All grant payment requests must be submitted to CJD on a Request for Funds form in accordance with the instructions provided on that form. A request for funds for [~~the reimbursement of~~] equipment costs and/or contractual services must include copies of the invoices.

(b) Grantees must ensure that CJD receives their final requests for funds postmarked no later than the 90th calendar day after the end of the grant period or funds will lapse and revert to the grantor agency. If this date falls on a weekend or federal holiday, then CJD will honor receipt or a postmark on the next business day. If grant funds are on hold for any reason, these funds will lapse at the end of the above-referenced period and the grantee cannot recover them. Under no circumstances will CJD make payments to grantees that submit their request for funds with a postmark after the above-referenced deadline.

(c) Local Law Enforcement Block Grant Program projects are exempt from subsection (a) of this section.

(d) Crime Stoppers Assistance Fund projects are exempt from subsection (a) of this section and instead may request funds once each quarter on a cost reimbursement basis only. Crime Stoppers Assistance Fund grantees must attach a completed Request for Funds form to their quarterly financial expenditure report.

§3.2513. Grant Adjustments.

(a) The authorized official must sign requests for grant adjustments that alter the amount of a grant award or the scope of a grant project. The project director, financial officer, or authorized official must sign requests for grant adjustments that do not alter the amount of a grant award or the scope of a grant project.

(b) Budget Adjustments. Adjustments consisting of increases or decreases in the amount of a grant or the reallocation of grant funds among or within approved budget categories, as defined in §3.3(10) [~~§3.3(11)~~] of this chapter, are considered budget adjustments, and, except as provided by paragraph (2) of this subsection, are allowable only with prior CJD approval. The following rules apply to budget adjustments:

(1) Changes in the indirect costs category require prior CJD approval through a written grant adjustment notice.

(2) During a grant period, grantees may transfer grant funds among or within the approved budget categories, as defined in §3.3(10)[~~§3.3(11)~~] of this chapter, without prior CJD approval as long as the amount transferred does not exceed a cumulative total of ten percent of the CJD-funded portion of a grant project during that grant period; the action does not change the scope of the project; and the change does not conflict with paragraph (1) of this subsection and §3.81(a) of this chapter.

(3) CJD will not approve more than four budget adjustments initiated by a grantee each grant year.

(4) CJD will not approve budget adjustment requests submitted within 30 calendar days of the end of the grant period unless the executive director grants an exception.

(5) All budget adjustments must comply with all relevant rules in this chapter. The grantee must maintain accurate records that show all budget adjustments.

(c) For supplemental grant awards, the grantee must accept or reject any additional award within 45 calendar days of the date upon which CJD issues a Grant Adjustment Notice and follow all rules in accordance with §3.11 of this chapter.

(d) Programmatic Changes. The following rules apply to programmatic changes:

(1) Requests to revise the scope, target, or focus of the project, or alter project activities require advance written approval from CJD.

(2) A grantee may submit a written request to extend the grant period. The request must be submitted to CJD and received or postmarked no later than the last day of the grant period.

§3.2515. Bonding.

Each nonprofit corporation[~~agency~~] receiving funds from CJD must obtain and have on file a blanket fidelity bond that indemnifies CJD against the loss and theft of the entire amount of grant funds. The cost of the bond is an eligible expense of the grant.

§3.2525. Evaluating Project Effectiveness.

(a) CJD grantees must regularly evaluate the effectiveness of their projects. This includes a reassessment of project activities and services to determine whether they continue to be effective. Grantees must show that their activities and services effectively address and achieve the project's stated purpose. CJD will monitor grantee success through required progress reports, on-site visits, and desk reviews. Grantees must maintain information related to project evaluations in the project's files, and that information must be available for review by CJD.

(b) Grantees are responsible for managing the day to day operations of grant and subgrant supported activities, including those of their contractors and subcontractors. Grantee monitoring must cover each program, function and activity. Grantees must develop, implement, and maintain a standardized monitoring program to continuously assure grant and subgrant supported activities are monitored. The monitoring program will include, at a minimum, mechanisms by which grantees will ensure they are achieving performance goals and receiving contracted deliverables as specified in agreements and contracts.

§3.2529. Grant Management.

(a) CJD has oversight responsibility for the grants it awards. CJD may review the grantee's management and administration of grant funds at any time and may also request records in accordance with the record retention requirements described[~~found~~] in §3.2505of this chapter. Grantees must respond to all CJD inquiries or requests and must make all requested records available to CJD.

(b) The grantee is the entity legally and financially responsible for the grant. A grantee may not delegate its legal or[~~and~~] financial responsibility, and must ensure that the project operates efficiently, effectively and in accordance with all applicable statutes, rules, regulations, and guidelines that govern CJD grants.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2601, §3.2603

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2601. Monitoring.

(a) CJD will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with all applicable statutes, rules, regulations, guidelines, and the provisions of grant agreements, and that grantees achieve grant purposes.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. CJD may implement monitoring through on-site review at the grantee and/or subgrantee location or through a desk review. In addition, CJD may request grantees to submit relevant information to CJD, pursuant to §3.2529 of this chapter, to support any monitoring review.

(c) Grantees must make available to CJD or its agents all requested records relevant to a monitoring review. CJD may make unannounced monitoring visits at any time. Failure to provide adequate documentation upon request may result in disallowed costs or other remedies for noncompliance as detailed under §3.2517of this chapter.

(d) After a monitoring review, the grantee will be notified in writing of any noncompliance identified by CJD in the form of a preliminary report.

(e) The grantee shall respond to the preliminary report and the deficiencies or recommendations, and submit a corrective action plan to CJD within a time frame specified by CJD.

(f) The corrective action plan shall include:

(1) the titles of the persons responsible for implementing the corrective action plan;

(2) the corrective action to be taken; and

(3) the anticipated completion date.

(g) If the grantee believes corrective action is not required for a noted deficiency or recommendation, the response shall include an explanation and specific reasons. CJD will determine whether the response is adequate to resolve the deficiency or recommendation.

(h) CJD's approval of the corrective action plan is required before the grantee implements the corrective action plan. The grantee's response and the approved corrective action plan shall become part of the final report.

(i) The grantee shall resolve all required actions identified in the final report within the time frame specified by CJD.

§3.2603. Audits Not Performed by CJD.

(a) Grantees must have audits performed in accordance with the requirements set forth in OMB CircularNo. A-133 and the State Single Audit Circular issued under UGMS.

(b) Grantees must submit to CJD copies of the results of any single audit conducted in accordance with OMB CircularNo. A-133 or in accordance with the State Single Audit Circular issued under UGMS. Grantees must ensure that single audit results, including the grantee's response and corrective action plan, if applicable, are submitted to CJD within 30 calendar days after the grantee receives the audit results or nine months after the end of the audit period, whichever is earlier.

(c) All other audits performed by auditors independent of CJD must be maintained at the grantee's administrative offices pursuant to §3.2505 of this chapter and be made available upon request by CJD. Grantees must notify CJD of any audit results that may adversely impact grant funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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David Zimmerman
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SUBCHAPTER G. CRIMINAL JUSTICE DIVISION ADVISORY BOARDS

DIVISION 1. CRIME STOPPERS ADVISORY COUNCIL

1 TAC §3.8105, §3.8115

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.8105. General Powers.

(a) Pursuant to Chapter 414 of the Texas Government Code, the [~~The~~] council is authorized to:[~~acts in an advisory capacity to the executive director of CJD, who will relate their recommendations and those of CJD to the governor as needed.~~]

(1) certify a crime stoppers organization to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure;

(2) decertify an organization, thereby rendering the organization ineligible to receive such repayments or payments; and

(3) adopt rules to carry out its function; however, the council may not adopt rules that conflict with rules relating to grants adopted by CJD.

(b) In addition, the acts in an advisory capacity to the executive director of CJD, who will relate their recommendations and those of CJD to the governor as needed.

§3.8115. Meetings.

(a) At all meetings, the latest version of *Robert's Rules of Order* [~~Robert's Rules of Order~~] shall govern proceedings.

(b) Meetings will be held at least annually and at other times deemed necessary by the chairman or the executive director of CJD.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. GOVERNOR'S JUVENILE JUSTICE ADVISORY BOARD

1 TAC §3.8205, §3.8215

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.8205. General Powers.

(a) The board acts in an advisory capacity to the executive director of CJD, who will relate their recommendations and those of CJD to the governor as needed.

(b) Pursuant to federal regulations governing implementation of the Juvenile Justice and Delinquency Prevention Act, the Governor's Juvenile Justice Advisory Board is designated as the supervisory board. Duties of the supervisory board shall be as follows:

(1) Advise CJD on matters pertaining to juvenile justice and delinquency prevention, including Title II of the Juvenile Justice and Delinquency Prevention Act;

(2) Participate in the development and review of the State's Juvenile Justice and Delinquency Prevention Three Year Plan, which may be updated annually as needed;

(3) Submit to the governor and legislature recommendations regarding state compliance with the requirements of Title [~~Subchapter~~] II, Part B, §223(a)(11) [~~§223(a)(12)~~], (12) [~~(13)~~], and (13) [~~(14)~~] of the Juvenile Justice and Delinquency Prevention Act of 2002 [~~1974~~], Public Law 107-273 [~~93-415~~], 42 U.S.C. 5601 et seq., as amended, and all funding sources provided to CJD from the Office of Juvenile Justice and Delinquency Prevention under the Juvenile Justice and Delinquency Prevention Act and the federally appropriated Juvenile Accountability Block Grant; and

(4) Consult and seek advice and suggestions frequently from juveniles currently under the jurisdiction of the juvenile justice system.

(c) CJD shall afford the Juvenile Justice Advisory Board the opportunity to review and comment on all juvenile justice and delinquency prevention grant applications submitted to CJD.

§3.8215. Meetings.

(a) At all meetings, the latest version of *Robert's Rules of Order* [~~Robert's Rules of Order~~] shall govern proceedings.

(b) Meetings will be held at least annually and at other times deemed necessary and appropriate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. GOVERNOR'S S.T.O.P. VIOLENCE AGAINST WOMEN PLANNING COUNCIL

1 TAC §3.8305, §3.8315

The amendment of these rules is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rules implement §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.8305. General Powers.

(a) The council acts in an advisory capacity to the executive director of CJD, who will relate their recommendations and those of CJD to the governor as needed.

(b) Pursuant to federal statutes governing the S.T.O.P. [~~STOP~~] Violence Against Women Formula Grant Program, the council shall make recommendations and develop a multi-year statewide implementation plan that will promote a coordinated community response to violence against women.

§3.8315. Meetings.

(a) At all meetings, the latest version of *Robert's Rules of Order* [~~Robert's Rules of Order~~] shall govern proceedings.

(b) Meetings will be held at times deemed necessary by the chairman of the council.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER I. MEMORANDUM OF UNDERSTANDING

1 TAC §3.9300

The amendment of this rule is proposed under §772.006(a)(10) of the Texas Government Code, which provides the Office of the Governor, Criminal Justice Division, the authority to adopt rules and procedures as necessary.

The amended rule implements §772.006(a) of the Texas Government Code, which requires the Office of the Governor, Criminal Justice Division, to award and administer state and federal grant programs, and to assist the governor in developing policies, plans, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.9300. Texas Department of Public Safety.

Pursuant to §411.0096 of the Texas Government Code, CJD and the Texas Department of Public Safety have entered into a memorandum of understanding pertaining to the coordination of drug law enforcement efforts. This memorandum of understanding may be amended, as necessary, by subsequent written agreement adopted by rule. The current memorandum of understanding is listed in the following: Figure: 1 TAC §3.9300

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2004.

TRD-200402184
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 463-1919

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.751

The Texas Health and Human Services Commission ("HHSC") proposes new §351.751, entitled "Integrated eligibility services call centers," to implement the requirement in section 531.063(a), Government Code, that HHSC establish at least one but not more than four call centers "by rule."

Background and Factual Basis for the Rule

Section 531.063, Government Code (as added by Acts 2003, 78th Leg., ch. 198, §2.06), requires the Health and Human Services Commission to establish one or more call centers for the purpose of determining, certifying, or recertifying a person's eligibility and need for services provided by certain programs assigned to HHSC's eligibility services division under section 531.008(c), Government Code. These programs include the Children's Health Insurance Program, Texas Medicaid program, Temporary Assistance to Needy Families program, Food Stamps, long-term care and community-based support services programs, and other health and human services programs as HHSC determines are appropriate.

The statute requires HHSC to establish at least one but not more than four such call centers if HHSC determines it is cost-effective to do so. It also requires such centers to be located in Texas, except that overflow calls may be directed to call centers located outside of Texas. The statute also directs HHSC to establish consumer service and performance standards to govern the operation of call centers by either HHSC or a contracted service provider.

On March 25, 2004, HHSC published a Business Case Analysis document that proposes a call center model for public consideration. The proposed model will be addressed at the public hearings discussed below. Business, employment and fiscal impacts of this rule are based on the proposed model. A description and details about the proposed model is available on HHSC's web site at http://www.hhsc.state.tx.us/Consolidation/Projects/IE/IE.html/.

Section-by-Section Explanation

Subsection (a) of the proposed rule describes the applicability of the proposed rule. Subsection (b) defines certain terms used in the proposed rule. Subsection (c) generally describes how HHSC will establish call centers in Texas, while subsection (d) describes the minimum required content of any contract HHSC may award for call center services. Subsection (e) prescribes HHSC's policy and process for providing an applicant for services an opportunity to request to appear in person to facilitate eligibility determination and the circumstances under which HHSC will provide such opportunity. Subsection (e) does not apply to a service for which federal law currently requires a face-to-face interview to be conducted for eligibility determination (such as the Food Stamp program) or for the CHIP program, which currently determines eligibility using a streamlined process that does not require a personal appearance by the applicant.

Public Benefit

Gregg Phillips, Deputy Executive Commissioner for Program Services, has determined that applicants and clients of programs that are included within the scope of a call center operation and the public will benefit from the implementation of the rule in several ways. First, implementation of call centers will improve access to program services and benefits for applicants and clients by (1) reducing the amount of time and personal expense required to apply for and receive services, (2) facilitating the implementation of streamlined and simplified eligibility processes, and (3) enhancing the accuracy of eligibility determination, certification, and recertification. The taxpayers will benefit from administrative cost savings that may be achieved from the successful implementation of call centers, improved public confidence in the accuracy and efficiency of public programs resulting from business and process improvements, and an improved return on the investment of tax dollars in eligibility determination services.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed rule is in effect, there will be no significant negative fiscal impact on state or local government. However, the establishment of call centers pursuant to the proposed rule will generate estimated savings to the State of Texas for State Fiscal Year 2004 of up to $71,593; for State Fiscal Year 2005 of up to $14,433,188; for State Fiscal Year 2006 of up to $50,390,047; for State Fiscal Year 2007 of up to $52,189,387; and for State Fiscal Year 2008 of up to $61,786,270.

Small and Micro-Business Impact Analysis

Because the proposed rule does not specify or require HHSC to establish any new call centers, HHSC does not believe the rule itself has any adverse impact on small or micro-businesses. However, HHSC understands that its establishment of call centers under the authority provided in section 531.063, Government Code, and the proposed rule may have some potentially adverse impact on some small or micro-businesses in Texas.

HHSC and other health and human services agencies lease office space for, among other purposes, performing eligibility determination for the programs currently included within the scope of the proposed rule. Some of this space may be leased from small and micro-businesses. HHSC anticipates that the establishment of call centers will reduce the need for office space for eligibility determination purposes. The precise impact of call centers on these businesses cannot be determined because neither the number of call centers nor the number or location of vacated leases was determined as of the date the proposed rule. Further, the impact of call centers on owners of leased office locations will be contingent on several factors beyond HHSC's control-e.g., the availability of replacement tenants, the marketability and marketing of specific vacated office locations, and local market conditions. Accordingly, HHSC is unable to estimate the impact on small and micro-businesses.

HHSC's Business Case Analysis indicates that state employment related to eligibility determination functions will remain constant in State Fiscal Year 2004, decline by 3,471 positions in State Fiscal Year 2005, and decline by another 1,016 positions in State Fiscal Year 2006. After these declines, employment is expected to remain stable, but at the reduced level, through State Fiscal Year 2008.

The employment effect on particular local areas cannot be estimated at this time because the call center model may change and HHSC has not identified the specific geographic areas that may be affected. Statewide, the proposed integrated eligibility call center model would have a positive impact on local employment productivity as people in the local workforce who are applicants, recipients, or assisting people to apply for benefits and services would not have to take off from work to apply in person at an office, but would be offered the option of more flexible means of accessing services.

Regulatory Analysis

The Health and Human Services Commission has determined that the proposed rule is not a "major environmental rule" as defined by section 2001.0225, Government Code. The proposed rule is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

The Health and Human Services Commission has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and therefore this action does not constitute a taking under Texas Government Code, section 2007,043. The proposed rule primarily is administrative and does not impose any new regulatory requirements that affect property. The proposed rule is reasonably taken to fulfill the requirements of state law.

Public Comment

Public comment may be submitted in writing to Angie Nelson-Wernli, Health and Human Services Commission, by mail addressed to P.O. Box 13247, Austin, Texas 78711, by facsimile to (512) 424-6669, or by electronic mail at angie.nelsonwernli@hhsc.state.tx.us. Comments must be submitted by 5:00 p.m., May 16, 2004. Further information may be obtained by calling Angie Nelson-Wernli at (512) 424-6931.

Public Hearing

HHSC will conduct public hearings during the public comment period for the proposed rule in multiple health and human services regions on the proposed rule in conjunction with public hearings required under section 531.063, Government Code, concerning the establishment of call centers. The dates, times, and locations of such public hearings will be posted on the Secretary of State's Open Meetings web site (http://www.sos.state.tx.us/open/index/.html) and the HHSC web site (http://www.hhsc.state.tx.us/news/meetings.html).

Statutory Authority

The new rule is proposed pursuant to the authority granted to HHSC under section 531.033, Government Code, and is required under section 531.063, Government Code, (as added by Acts 2003, 78th Leg., ch. 198, §2.06).

The proposed rule affects section 531.0653, Government Code, Chapters 31, 32, and 33, Human Resources Code, and Chapter 62, Health and Safety Code.

§351.751. Integrated eligibility services call centers.

(a) Applicability. This section applies to integrated eligibility services call centers by the Health and Human Services Commission ("HHSC") established after June 1, 2004.

(b) Definitions. The following words and phrases, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) "Applicant" means a person who asks HHSC to determine, certify, or recertify his or her eligibility for a service.

(2) "Call center" means a place where HHSC or an HHSC contractor receives and responds to applicants' telephone inquiries and processes information in order to assist HHSC to determine, certify, or recertify an applicant's eligibility for a service.

(3) "Contractor" means a public or private entity that is awarded a contract to provide call center services under this section.

(4) "Service" means a benefit or assistance provided under any of the following programs:

(A) the Children's Health Insurance Program ("CHIP") established under Chapter 62, Health and Safety Code;

(B) the Temporary Assistance to Needy Families ("TANF") program established under Chapter 31, Human Resources Code;

(C) the Medicaid program established under Chapter 32, Human Resources Code;

(D) the nutritional assistance programs established under Chapter 33, Human Resources Code, including the Food Stamp Program;

(E) long-term care services, as defined by Section 22.0011, Human Resources Code;

(F) community-based support services identified or provided in accordance with Section 531.02481, Government Code; and

(G) any other health and human services program that HHSC determines is appropriate to include as part of a call center service.

(c) Establishment and number of call centers.

(1) HHSC must establish at least one but not more than four call centers if HHSC determines that it is cost-effective to establish such call centers subject to subsections (c)(2) through (c)(4) of this section.

(2) Subject to subsection (d) of this section, HHSC must contract with at least one but not more than four private entities for the operation of call centers identified in subsection (c)(1) of this section, unless HHSC determines that contracting is not cost effective.

(3) HHSC must operate any call center identified under subsection (c)(1) of this section that it determines is not cost effective to contract with a private entity to operate.

(4) Each call center established under this section will be located in Texas, but overflow calls from a call center located in Texas may be processed at a call center located outside of Texas.

(5) Each call center established under this section must provide translation services as required by federal law.

(6) HHSC will conduct one or more public hearings around the state before it establishes any call center under this section.

(d) Contracting requirements.

(1) Any contract for call center services will be competitively procured in compliance with Section 2155.144, Government Code; HHSC administrative rules codified at 1 TAC chapter 391; and applicable federal laws and regulations.

(2) Any contract for call center services that HHSC awards under this section must include, at a minimum:

(A) Performance requirements that describe the specific services to be performed by a contractor;

(B) Terms and conditions that are expressly required by state or federal laws, rules or regulations; and

(C) Any other provision that HHSC determines is necessary or beneficial to the State of Texas including, but not limited to, HHSC's Uniform Contract Terms and Conditions published on the HHSC Internet web site.

(e) Performance standards and measurement.

(1) HHSC must develop performance standards to govern the operation of each call center that address, at a minimum:

(A) The call center's ability to serve consumers in a timely manner;

(B) Quality and accuracy of eligibility determinations conducted through the call center;

(C) Courtesy, friendliness, training, and knowledge of call center staff;

(D) The call center's management of consumer and public complaints;

(E) Consumer satisfaction with the call center's services; and

(F) Any other standard that HHSC determines is necessary to ensure the desired or expected levels and quality of call center services.

(2) HHSC must develop mechanisms for measuring the operation of each call center and to evaluate call centers' compliance with all performance standards.

(3) HHSC may establish performance standards and measurements for a contracted call center under a competitive procurement

(4) HHSC will publish all call center performance standards and measures.

(f) Establishment of eligibility by personal appearance.

(1) This subsection does not apply to an applicant whose eligibility must be established or who must be certified or recertified through a face-to-face interview under federal law or to an applicant for CHIP services.

(2) An applicant may request the opportunity to appear in person to establish initial eligibility for a service or for certification or recertification purposes.

(3) If an applicant wishes to appear personally to assist HHSC to determine, certify, or recertify his or her eligibility for a service, the applicant must notify HHSC or the health and human services agency that administers the program. An applicant may provide notice in any of the following ways:

(A) In person at an office of the health and human services agency that administers the program;

(B) In writing by using materials that HHSC provides for this purpose or by any other written method;

(C) By telephone using a toll-free number that HHSC acquires for this purpose; or

(D) By an electronic method that HHSC creates for this purpose, including facsimile and electronic mail.

(4) HHSC or its contractor will schedule a personal appearance upon request unless HHSC can establish the applicant's eligibility without a personal appearance. The personal appearance will be scheduled at a time and location that reasonably accommodates the applicant's schedule, location, and circumstances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2004.

TRD-200402182

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 424-6576

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 11. SURFACE MINING AND RECLAMATION DIVISION

SUBCHAPTER E. QUARRY AND PIT SAFETY

16 TAC §§11.1001 - 11.1005, 11.1021, 11.1031 - 11.1045, 11.1061 - 11.1065, 11.1081

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation (department) proposes the repeal of Title 16, Part 1, Chapter 11, Subchapter E, §§11.1001-11.1005, 11.1021, 11.1031-11.1045, 11.1061-11.1065, and 11.1081 concerning Quarry and Pit Safety.

EXPLANATION OF PROPOSED REPEALS

House Bill 2847, 78th Legislature, Regular Session, 2003, transferred all powers, duties, functions, and activities performed by the Railroad Commission of Texas under the Texas Aggregate Quarry and Pit Safety Act, Chapter 133, Natural Resources Code, to the Texas Department of Transportation.

Due to fundamental differences in structure and operation between the Railroad Commission and the department, the rules in Title 16 cannot be implemented by the department in their current form. The department is simultaneously proposing new Subchapter M, §§21.701-21.723, Title 43, concerning quarry pit safety.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals. There are no anticipated economic costs for persons required to comply with the repeals as proposed.

Zane L. Webb, P.E., Director, Maintenance Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT

Mr. Webb has also determined that for each of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be rules that accurately reflect law. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals may be submitted to Zane L. Webb, P.E., Director, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 10, 2004.

STATUTORY AUTHORITY: The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Texas Natural Resources Code, §133.011, which provides the commission with authority to adopt rules regarding the Texas Aggregate Quarry and Pit Safety Act.

CROSS REFERENCE TO STATUTE: Texas Natural Resources Code, §133.011.

§11.1001. Purpose and Scope.
§11.1002. Adoption by Reference.
§11.1003. Special Rules.
§11.1004. Definitions.
§11.1005. Form Availability.
§11.1021. Fees.
§11.1031. Initial Inventory Report Requirements.
§11.1032. Form and Content of Initial Inventory Report.
§11.1033. Barriers Required.
§11.1034. Barrier Construction Standards.
§11.1035. Prohibition against Opening Pits.
§11.1036. Quarry Safety Plan.
§11.1037. Sloping of Pit Sidewalls.
§11.1038. Safety Certificate Required.
§11.1039. Construction, Expansion, or Relocation of Roads.
§11.1040. Form and Content of Safety Certificate Applications.
§11.1041. Review of Applications.
§11.1042. Inspection of Barriers and Certificate Decision.
§11.1043. Transfer of Certificate after Transfer of Title
§11.1044. Recertification after Transfer of Title.
§11.1045. Cessation of Operations.
§11.1061. Enforcement.
§11.1062. Civil Penalties.
§11.1063. Injunctive Relief.
§11.1064. Recovery of Costs.
§11.1065. Request for Suit and Venue.
§11.1081. Forms.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402135
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 463-8630

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 2. RECOVERY OF STRANDED COSTS

16 TAC §25.263

The Public Utility Commission of Texas (commission) proposes an amendment to §25.263, relating to True-up Proceeding. The proposed amendment will delete the conflict of interest provisions relating to the employment of a valuation panel to ascertain the existence of and value of a control premium for any power generation company that uses the partial stock valuation method to determine the market value of its generation assets, in connection with determining its stranded costs. The commission will instead consider appropriate conflict of interest standards in selecting persons to serve on the valuation panel. Project Number 29478 is assigned to this proceeding.

Jess Totten, Director, Electric Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Totten has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a broader group of persons who would be eligible to serve on the valuation panel and a more accurate determination of the market value of stranded costs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Totten has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, April 13, 2004 at 9:30 a.m.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 29478.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2004) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.262, which authorizes the commission to employ a valuation panel to determine whether a control premium exists and the value of the control premium for a power generation company that uses the partial stock valuation method to determine its market value.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.262.

§25.263. True-up Proceeding.

(a) - (e) (No change.)

(f) Quantification of market value of generation assets.

(1) Market value of generation assets shall be quantified using one or more of the following methods:

(A) - (B) (No change.)

(C) Partial stock valuation method. The following method of market valuation using a control premium may be used to value generation assets.

(i) - (iii) (No change.)

~~*[(iv)* None of the financial experts chosen for the panel shall have participated, or be employed by an investment house or brokerage house which has participated, in the business separation, securitization, or other activities related to the implementation of PURA Chapter 39 on behalf of the utility for which the market valuation is being determined.]~~

(iv) [~~(v)~~] If the panel determines that a control premium exists for the retained interest, the panel shall determine the amount of the control premium, and the commission shall adopt the determination, but may not use the control premium to increase the value of the assets by more than 10%.

(v) [~~(vi)~~] The costs and expenses of the panel, as approved by the commission, shall be paid by each transferee corporation.

(vi) [~~(vii)~~] The determination of the commission, based on the finding of the panel and other admitted evidence, conclusively establishes the value of the common stock of each transferee corporation.

(vii) [~~(viii)~~] The average book value of each transferee corporation's debt and preferred stock securities during the 30-day period chosen by the commission to determine the market value of common stock shall be added to the market value of its stock.

(viii) [~~(ix)~~] The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by the transferee corporation from any entity other than the electric utility or its APGC.

(ix) [~~(x)~~] The market value of the assets resulting from the procedures required by clauses (i) - (viii) [~~(ix)~~] of this subparagraph establishes the market value of the generation assets transferred by the electric utility or APGC to each transferee corporation.

(D) (No change.)

(2) (No change.)

(g) - (m) (No change.)

(n) Proceeding subsequent to the true-up.

(1) The TDU shall file an application to adjust its rates within 60 days following the issuance of a final, appealable order in [~~on~~] its true-up proceeding. In the proceeding, the commission may adjust the TDU's rates and any CTC, in accordance with PURA §39.262(g), and any excess mitigation credit. The commission may also allocate the recovery responsibility for such rates and any CTC to the TDU's customer classes.

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402144
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 936-7223

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER F. ACTION BY THE COMMISSION

30 TAC §50.113

The Texas Commission on Environmental Quality (commission) proposes an amendment to §50.113.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This rule package adds two new types of applications to a listing of applications that the commission may act on without holding a contested case hearing. This listing is in §50.113(d).

There are two separate reasons for the proposed amendment.

First, the proposed amendment to §50.113(d)(5) will implement House Bill (HB) 2567, 78th Legislature, 2003, which amended the Texas Water Code by adding new §27.021. HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of Texas Water Code, §27.018. The commission's ability to hold a discretionary hearing under the provisions of Texas Water Code, §5.102(b) was not amended by HB 2567. Other options for disposal of desalination brine are Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit.

Second, the proposed amendment that adds §50.113(d)(6) will update the list of applications that are not subject to a contested case hearing, by adding applications for pre-injection unit registrations. Pre-injection unit registrations were created by a previous rulemaking in the January 3, 2003, issue of the *Texas Register* (28 TexReg 340). The rules for pre-injection unit registrations, which can be found in 30 TAC §331.17 and §331.18, do not provide for contested case hearings. This amendment will update

the list of applications that the commission may act on without holding a contested case hearing.

Changes to 30 TAC Chapters 55, 305, and 331 are also proposed in this issue of the *Texas Register* to implement HB 2567.

SECTION DISCUSSION

The proposed amendment to §50.113(d) will add two new types of applications to the current list of applications that the commission may act on without holding a contested case hearing. The first addition, applications for Class I injection well permits used only for the disposal of desalination brine, will be added to existing paragraph (5). This first item will implement Texas Water Code, §27.021. The second addition, applications for pre-injection unit registrations, will be inserted in new paragraph (6). This second change will bring the list in line with other provisions of a previous rulemaking. In addition, the language in existing paragraph (5) relating to other types of applications will be moved to new paragraph (7).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Program Specialist in the Federal Grants and Strategic Planning Section, determined that for the first five-year period the proposed amendment is in effect, there will be no adverse fiscal implications for the agency or any other state agency. The amendment implements HB 2567, 78th Legislature, 2003, which may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the possibility of a contested case hearing. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Ms. Washburn also determined that there will be no adverse fiscal impact to units of local government as a result of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Ms. Washburn determined that for the first five years the proposed amendment is in effect, the anticipated public benefit will be to allow desalination projects to come on line in a shorter time frame if disposal of brine will be via injection wells. State and local governments, small and micro-businesses, and other entities could possibly save both time and money by avoiding contested case hearings. Desalination projects could also help increase the potable water supply. Ms. Washburn also determined that there will be no adverse fiscal impacts to the public or individuals as a result of the proposed amendment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn also determined that there will be no adverse fiscal implications to small or micro-businesses as a result of implementation of the proposed amendment for the first five years it is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposal is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal does not meet the definition of a "major environmental rule" because the specific intent of the rule is to add language to the procedural rules to provide that an application for a Class I injection well for the disposal of brine produced by a desalination operation and an application for a pre-injection unit registration are not subject to a contested case hearing. The rule substantially advances this purpose by providing that the application for a Class I injection well for the disposal of desalination brine is not subject to a contested case hearing, and by adding applications for pre-injection unit registrations to the list of applications not subject to a contested case hearing. The proposal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because it updates the procedural rule for applications not subject to a contested case hearing. The proposal is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the permit for a Class I injection well for the disposal of desalination brine must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well and because the provision regarding applications for pre-injection units reflects existing rules and will not adversely affect these interests.

In addition, the proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0225(a) because the proposal does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) seek to adopt a rule solely under the general powers of the agency.

The proposal does not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing on an application for a Class I injection well permit or a pre-injection unit registration. Furthermore, the proposal does not exceed an express requirement of state law because the exemption for Class I wells that dispose of brine produced by a desalination operation is mandated by state law, and because no state law expressly requires a contested case hearing on pre-injection unit registrations. In addition, the proposal does not exceed any requirement of the delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for requiring a contested case hearing for the issuance of a Class I injection well permit for the disposal of brine from a desalination operation and because the delegation agreement does not address pre-injection unit registrations. Finally, this proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of Texas Water Code, §27.019 and §27.021.

The commission invites public comment on the draft regulatory impact analysis determination. All comments will be addressed in the publication of the final regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed amendment and performed an assessment of whether the amendment constitutes a taking under Texas Government Code, §2007.043.

The specific purpose of the proposed amendment is to revise the list in §50.113(d) so it reflects recent amendments to the Texas Water Code and conforms to current rules. The proposed amendment will add two applications to the list of applications that are not subject to contested case hearings: 1) applications for permits to dispose of brine produced by desalination operations in Class I injection wells and 2) applications for pre-injection unit registrations.

The proposed amendment would substantially advance the previously-stated purpose by providing that the permit procedures for Class I injection wells for the disposal of brine produced by desalination operations and the procedures for pre-injection unit registrations do not provide the opportunity for a contested case hearing.

The proposed amendment does not impose any burden on private real property and it does not result in any benefit to society from the proposed use of private real property because the proposed amendment does not directly apply to the ownership or use of a particular parcel of private real property. In addition, because the amendment does not apply to the ownership or use of a particular parcel of private real property, the amendment does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the proposed amendment.

Therefore, promulgation and enforcement of this proposed amendment would not be a statutory or constitutional taking of private real property.

The commission has no reasonable alternative actions that could accomplish the specified purpose of revising the list in §50.113(d) so it reflects recent amendments to the Texas Water Code and conforms to current rules. Without the proposed amendment, the list of applications that are not subject to opportunities for contested case hearings would remain outdated.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendment is consistent with CMP goals and policies because the rulemaking is an administrative rule. The rulemaking will not have direct or significant adverse effect on any coastal natural resource areas, nor will it have a substantive effect on commission actions subject to the CMP. Promulgation and enforcement of the amendment will not violate or exceed any standards identified in the applicable CMP goals and policies.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-062-331-WS. Comments must be received by 5:00 p.m., May 10, 2004. For further information, please contact Fred Duffy of the Waste Permits Division at (512) 239-6891 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also proposed under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The proposed desalination amendment implements Texas Water Code, §27.021, relating to Permit for Disposal of Brine from Desalination Operations in Class I Wells. The proposed pre-injection unit registration amendment implements Texas Water Code, Chapter 27.

§50.113. Applicability and Action on Application.

(a) - (c) (No change.)

(d) Without holding a contested case hearing, the commission may act on:

(1) - (3) (No change.)

(4) an application for a wastewater discharge permit renewal or amendment under Texas Water Code, §26.028(d), unless the commission determines that an applicant's compliance history as determined under Chapter 60 of this title (relating to Compliance History) raises issues regarding the applicant's ability to comply with a material term of its permit; [~~and~~]

(5) an application for a Class I injection well permit used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells;

(6) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-Injection Units Registration); and

(7) [~~(5)~~] other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402139
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 239-6087

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CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (commission) proposes amendments to §55.101 and §55.201.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

There are three separate reasons for the proposed amendments.

First, the proposed amendments to §55.101(f)(5) and §55.201(i)(6) will implement House Bill (HB) 2567, 78th Legislature, 2003, which amended the Texas Water Code, by adding new §27.021. HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of Texas Water Code, §27.018. The commission's ability to hold a discretionary hearing under the provisions of Texas Water Code, §5.102(b) was not amended by HB 2567. Other options for disposal of desalination brine are Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit.

Second, the proposed amendment to §55.101(g)(11) and the addition of §55.201(i)(7) will update the list of applications that are not subject to a contested case hearing by adding applications for pre-injection unit registrations. Pre-injection unit registrations were created by a previous rulemaking in the January 3, 2003 issue of the *Texas Register* (28 TexReg 340). The rules for pre-injection unit registrations, which can be found in 30 TAC §331.17 and §331.18, do not provide for contested case hearings.

Third, the proposed amendment to §55.101(f)(4) will remove applications for weather modification licenses or permits from the list of applications that are not subject to a contested case hearing because the commission no longer administers the weather modification licensing and permitting program. Senate Bill (SB) 1175, 77th Legislature, 2001 transferred all powers, duties, obligations, rights, records, employees, and property that are used to administer the weather modification licensing and permitting program from the commission to the Texas Department of Licensing and Regulation. Additionally, SB 1175 transferred all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds used to administer the weather modification grant program to the Texas Department of Agriculture. The commission repealed the majority of the rules regarding weather modification in the March 1, 2002 issue of the *Texas Register* (27 TexReg 1498).

Changes to 30 TAC Chapters 50, 305, and 331 are also proposed in this issue of the *Texas Register* to implement HB 2567.

SECTION BY SECTION DISCUSSION

The proposed amendment to §55.101, Applicability, will update the lists in subsections (f) and (g). Subsection (f) contains a list of applications and exemptions and provides that the hearing requests related to those applications and exemptions are not subject to the provisions of Subchapters D - G of Chapter 55. Subsection (g) contains a list of applications and permits that are not subject to Subchapters D - G. In subsection (f), the proposed amendment will delete paragraph (4), which references weather modification licenses or permits. These licenses or permits are no longer regulated by the commission. The proposed amendment will also add applications for Class I injection well permits used only for the disposal of desalination brine as new paragraph (4). In subsection (g), the proposed amendment will add applications for pre-injection unit registrations to existing paragraph (11), and the existing language in paragraph (11) will move to new paragraph (12).

The proposed amendment to §55.201, Requests for Reconsideration or Contested Case Hearing, will update subsection (i), which contains the list of applications for which there is no right to a contested case hearing. Two applications will be added to the list. First, applications for Class I injection well permits used only for the disposal of brine from desalination operations will be added to paragraph (6), and the existing language under paragraph (6) will be added to new paragraph (8). Second, applications for pre-injection unit registrations will be added to new paragraph (7). This second change will update the list so it will conform to previous rule adoptions.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Program Specialist in the Federal Grants and Strategic Planning Section, determined that for the first five-year period the proposed amendments are in effect, there will be no adverse fiscal implications for the agency or any other state agency. These amendments implement HB 2567, 78th Legislature, 2003, which may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the possibility of a contested case hearing. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Ms. Washburn also determined that there will be no adverse fiscal impact to units of local government as a result of these proposed amendments.

PUBLIC BENEFITS AND COSTS

Ms. Washburn determined that for the first five years the proposed amendments are in effect, the anticipated public benefit will be to allow desalination projects to come on line in a shorter time frame if disposal of brine will be via injection wells. State and local governments, small and micro-businesses, and other entities could possibly save both time and money by avoiding contested case hearings. Desalination projects could also help increase the potable water supply. Ms. Washburn also determined that there will be no adverse fiscal impacts to the public or individuals as a result of these proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn also determined that there will be no adverse fiscal implications to small or micro-businesses as a result of implementation of the proposed amendments for the first five years they are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposal is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal does not meet the definition of a "major environmental rule" because the specific intent of the rulemaking is to add language to the procedural rules to provide that an application for a Class I injection well for the disposal of brine produced by a desalination operation and an application for a pre-injection unit registration are not subject to a contested case hearing. The rules substantially advance this purpose by providing that the application for a Class I injection well for the disposal of desalination brine is not subject to a contested case hearing, and by adding applications for pre-injection unit registrations to the list of matters not subject to a contested case hearing. The proposal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because it updates the procedural rule for applications not subject to a contested case hearing. The proposal is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the permit for a Class I injection well for the disposal of desalination brine must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well and because the provision relating to applications for pre-injection units reflects existing rules and will not adversely affect these interests.

In addition, the proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0225(a) because the proposal does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) seek to adopt a rule solely under the general powers of the agency.

The proposal does not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing on an application for a Class I injection well permit or a pre-injection unit registration. Furthermore, the proposal does not exceed an express requirement of state law because the exemption for Class I wells that dispose of brine produced by a desalination operation is mandated by state law, and because no state law expressly requires a contested case hearing on pre-injection unit registrations. In addition, the proposal does not exceed any requirements of the delegation agreement concerning injection wells because the delegation agreement does not establish express requirements for requiring a contested case hearing for the issuance of a Class I injection well permit for the disposal of brine from a desalination operation and because the delegation agreement does not address pre-injection unit registrations. Finally, this proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of Texas Water Code, §27.019 and §27.021.

The commission invites public comment on the draft regulatory impact analysis determination. All comments will be addressed in the publication of the final regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendments and performed an assessment of whether the proposed amendments constitute a taking under Texas Government Code, §2007.043.

The specific purpose of the proposed amendments is to revise the lists in §55.101 and §55.201 so they reflect recent amendments to the Texas Water Code, §27.021 and conform to current rules regarding pre-injection unit registrations. In §55.101, the proposed amendment will revise subsection (f), which contains a list of applications and exemptions not subject to hearing requests under Subchapters D - G, and the list in subsection (g), which contains a list of applications and permits not subject to Subchapters D - G. The proposed amendment will add applications for Class I injection well permits used only for the disposal of desalination brine to subsection (f), and will add applications for pre-injection unit registrations to subsection (g). In §55.201, the proposed amendment will revise the list in subsection (i), which contains the list of applications for which there is no right to a contested case hearing. The proposed amendment will add applications for Class I injection well permits used only for the disposal of brine from desalination operations and applications for pre-injection unit registrations to subsection (i). These changes will revise the lists in §55.101 and §55.201.

The proposed amendments would substantially advance the previously-stated purpose by providing that the permit procedures for Class I injection wells for the disposal of brine produced by desalination operations and the procedures for pre-injection unit registrations do not provide the opportunity for a contested case hearing.

The proposed amendments do not impose any burden on private real property and they do not result in any benefit to society from the proposed use of private real property because the proposed amendments do not directly apply to the ownership or use of a particular parcel of private real property. In addition, because the amendments do not apply to ownership or use of a particular parcel of private real property, the amendments do not burden, restrict, or limit an owners right to property, or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the proposed amendments.

Therefore, promulgation and enforcement of the proposed amendments would not be a statutory or a constitutional taking of private real property.

The commission has no reasonable alternative actions that could accomplish the specified purpose of revising the lists in §55.101 and §55.201 so they reflect recent amendments to the Texas Water Code and conform to current rules. Without the proposed amendments to the rules, these lists would remain outdated.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendments are consistent with CMP goals and policies because the rulemaking is an administrative rule. The rulemaking will not have direct or significant adverse effect on any coastal natural resource areas, nor will it have a substantive effect on commission actions subject to the CMP. Promulgation and enforcement of the amendments will not violate or exceed any standards identified in the applicable CMP goals and policies.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-062-331-WS. Comments must be received by 5:00 p.m., May 10, 2004. For further information, please contact Fred Duffy of the Waste Permits Division at (512) 239-6891 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also proposed under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The proposed desalination amendment implements Texas Water Code, §27.021, relating to Permit for Disposal of Brine from Desalination Operations in Class I Wells. The proposed pre-injection unit registration amendment implements Texas Water Code, Chapter 27.

§55.101. Applicability.

(a) Subchapters D - G of this chapter (relating to Applicability and Definitions; Public Comment and Public Meetings; Requests for Reconsideration or Contested Case Hearing; and Requests for Contested Case Hearing and Public Comment on Certain Applications) apply to permit applications that are declared administratively complete on or after September 1, 1999, as specified in subsections (b) - (g) of this section [~~below~~].

(b) (No change.)

(c) Subchapters D - F of this chapter apply only to applications filed under Texas Water Code, Chapters 26 and 27[~~,~~] and Texas Health and Safety Code, Chapters 361 and 382.

(d) Subchapter G of this chapter applies to all applications other than those listed in subsection (e) of this section [~~§55.101(e)~~] and other than those filed under Texas Water Code, Chapters 26 and 27[~~,~~] and Texas Health and Safety Code, Chapters 361 and 382.

(e) (No change.)

(f) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) - (3) (No change.)

(4) applications for Class I injection well permits used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells [~~weather modification licenses or permits under Texas Water Code, Chapter 18~~]; and

(5) (No change.)

(g) Subchapters D - G of this chapter do not apply to:

(1) (No change.)

(2) applications for authorization under Chapter 321 of this title (relating to Control of Certain [~~certain~~] Activities by Rule) except for applications for individual permits under Subchapter B of that chapter;

(3) - (4) (No change.)

(5) applications under Texas Water Code, Chapter 13 and Texas Water Code, §§11.036, 11.041, or 12.013. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law, and may refer the application to the chief clerk for hearing processing. The maximum expected duration of a hearing on an application referred to The State Office of Administrative Hearings [~~SOAH~~] under this provision shall be no longer than one year from the first day of the preliminary hearing, unless otherwise directed by the commission. The issues to be considered in a State Office of Administrative Hearings [~~SOAH~~] hearing on an application subject to this provision are all those issues that are material and relevant under the law;

(6) - (9) (No change.)

(10) applications for multiple plant permits under Texas Health and Safety Code, §382.05194; [~~and~~]

(11) applications for pre-injection unit registrations under §331.17 of this title (relating to Pre-injection Units Registration); and

(12) [~~(11)~~] applications where the opportunity for a contested case hearing does not exist under other laws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402140
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 239-6087

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SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.201

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing

any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001. The pre-injection unit registration amendment is also proposed under Texas Health and Safety Code, §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; and under Texas Health and Safety Code, §401.051, which provides the commission with authority to adopt rules necessary to carry out its powers and duties under the Texas Radiation Control Act.

The proposed desalination amendment implements Texas Water Code, §27.021, relating to Permit for Disposal of Brine from Desalination Operations in Class I Wells. The proposed pre-injection unit registration amendment implements Texas Water Code, Chapter 27.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) - (f) (No change.)

(g) Procedures for late filed public comments, requests for reconsideration, or contested case hearing are as follows.[:]

(1) A request for reconsideration or contested case hearing, or public comment shall be processed under §55.209 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the application file. [; and]

(2) (No change.)

(h) (No change.)

(i) Applications for which there is no right to a contested case hearing include:

(1) - (4) (No change.)

(5) an application, under Texas Water Code, Chapter 26, to renew or amend a permit if:

(A) - (D) (No change.)

(E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit; [and]

(6) an application for a Class I injection well permit used only for the disposal of desalination brine under Texas Water Code, §27.021, concerning Permit for Disposal of Brine From Desalination Operations in Class I Wells;

(7) an application for a pre-injection unit registration under §331.17 of this title (relating to Pre-injection Units Registration); and

(8) [(6)] other types of applications where a contested case hearing request has been filed but no opportunity for hearing is provided by law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

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CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.72

The Texas Commission on Environmental Quality (commission) proposes an amendment to §305.72.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This rule package amends §305.72 in order to implement House Bill (HB) 2567, 78th Legislature, 2003, and its amendments to Texas Water Code, §27.021. The intent of HB 2567 was to exempt permits for Class I injection wells that dispose of brine produced by a desalination operation from the hearing required by Texas Water Code, §27.018 under the provisions of Texas Government Code, Chapter 2001. HB 2567 does not exempt Class I injection well permits for the disposal of any other waste streams from these hearing requirements. The purpose of this amendment is to provide that when a Class I injection well permit for the disposal of desalination brine is issued without a hearing under HB 2567, and then the permit holder seeks to dispose of other types of wastes in the well, the permit amendment process will provide the opportunity for a hearing as required by Texas Water Code, §27.018 under the provisions of Texas Government Code, Chapter 2001.

The proposed amendment specifies that a permit for a Class I injection well used only for the disposal of desalination brine may not be administratively modified, under §305.72(b)(4), in order to change the waste streams injected into the Class I injection well to a waste stream other than desalination brine. The effect of this amendment will be that a permit change of this kind will require a major amendment under §305.62(c)(1)(A), which provides an opportunity for a contested case hearing. This amendment will ensure that the hearing requirements of Texas Water Code, §27.018 for general purpose Class I injection well permits will be retained after a permit is issued under the provisions of HB 2567.

Amendments to 30 TAC Chapters 50, 55, and 331 are also proposed in this issue of the *Texas Register* to implement HB 2567.

SECTION DISCUSSION

This rule package amends §305.72(b)(4) to specify that the kind of permit modification allowed by this paragraph shall not include modifying a Class I injection well permit used only for the disposal of desalination brine to a general purpose Class I injection well permit. This amendment effectively precludes a permit holder for this type of Class I injection well (used only for the disposal of desalination brine) from adding waste streams other

than desalination brine without providing the opportunity for a contested case hearing.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Program Specialist in the Federal Grants and Strategic Planning Section, determined that for the first five-year period the proposed amendment is in effect, there will be no adverse fiscal implications for the agency or any other state agency. The amendment implements HB 2567, 78th Legislature, 2003, which may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the possibility of a contested case hearing. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Ms. Washburn also determined that there will be no adverse fiscal impact to units of local government as a result of the proposed amendment. The amendment to Chapter 305 precludes an entity that has obtained a permit to dispose of brine from adding waste streams, unless the permit holder has gone through the commission's normal permitting process, which includes the opportunity for a contested case hearing.

PUBLIC BENEFITS AND COSTS

Ms. Washburn determined that for the first five years the proposed amendment is in effect, the anticipated public benefit will be to allow desalination projects to come on line in a shorter time frame if disposal of brine will be via injection wells. State and local governments, small and micro-businesses, and other entities could possibly save both time and money by avoiding contested case hearings. Desalination projects could also help increase the potable water supply. Ms. Washburn also determined that there will be no adverse fiscal impacts to the public or individuals as a result of the proposed amendment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn also determined that there will be no adverse fiscal implications to small or micro-businesses as a result of implementation of the proposed amendment for the first five years it is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposal is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal does not meet the definition of a "major environmental rule" because the specific intent of the rule is to preserve the hearing requirements of Texas Water Code, §27.018. The rule substantially advances this purpose by providing that §305.72 may not be used to add a waste stream, other than desalination brine, to the permit for a Class I injection well that was issued without a contested case hearing. The proposal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because it maintains current requirements of state law and thus does not change the status quo. The proposal is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the provision maintains existing requirements of state law and thus does not change the status quo.

In addition, the proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0225(a) because the proposal does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) seek to adopt a rule solely under the general powers of the agency.

The proposal does not exceed a standard set by federal law because there are no corresponding federal standards requiring a contested case hearing for a permit for a Class I injection well. Furthermore, the proposal does not exceed an express requirement of state law because the hearing requirement is mandated by state law. In addition, the proposal does not exceed the requirements of the delegation agreement concerning injection wells because the delegation agreement does not require contested case hearings for Class I injection well permits to dispose of brine produced by desalination operations. Finally, this proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of Texas Water Code, §27.019 and §27.021.

The commission invites public comment on the draft regulatory impact analysis determination. All comments will be addressed in the publication of the final regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendment and performed an assessment of whether the amendment constitutes a taking under Texas Government Code, §2007.043.

The specific purpose of the proposed amendment is to preserve the contested case hearing requirement of Texas Water Code, §27.018. Texas Water Code, §27.021 provides that an application for a Class I injection well for the disposal of brine produced by a desalination operation is not subject to the hearing requirements of Texas Water Code, §27.018 and Texas Government Code, Chapter 2001. Section 305.72 provides a procedure for permit modification at the request of the permittee without the opportunity for a contested case hearing. One of the permit modifications under this section is a change of waste stream. The proposal provides that this provision may not be used to add a waste stream, other than desalination brine, to the permit of a Class I injection well when that permit was obtained without the opportunity for a contested case hearing.

The proposed amendment would substantially advance the previously-stated purpose by providing that §305.72 may not be used to add a waste stream other than desalination brine to the permit of a Class I injection well issued without the opportunity for a contested case hearing.

The proposed amendment does not impose any burden on private real property and it does not result in any benefit to society from the proposed use of private real property because the proposed amendment does not directly apply to the ownership or

use of a particular parcel of private real property. In addition, because the amendment does not apply to the ownership or use of a particular parcel of private real property, the amendment does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the proposed amendment.

Therefore, promulgation and enforcement of this proposed amendment would not be a statutory or a constitutional taking of private real property.

The commission has no reasonable alternative actions that could accomplish the specified purpose of preserving the contested case hearing requirement of Texas Water Code, §27.018. The proposed amendment ensures that the contested case hearing requirements for general purpose Class I injection well permits will be retained after a permit is issued under the provisions of HB 2567, 78th Legislature, 2003.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendment is consistent with CMP goals and policies because the rulemaking is an administrative stipulation that specifies that §305.72(b)(4) shall not be used to change a permit from a Class I injection well permit used only for the disposal of desalination brine to a general purpose Class I injection well permit. This amendment will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendment will not violate (exceed) any standards identified in the applicable CMP goals and policies.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-062-331-WS. Comments must be received by 5:00 p.m., May 10, 2004. For further information, please contact Fred Duffy of the Waste Permits Division at (512) 239-6891 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001.

The amendment implements Texas Water Code, §27.018 and §27.021.

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

(a) (No change.)

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

(1) correct [~~Correct~~] typographical errors;

(2) require [~~Require~~] more frequent monitoring or reporting by the permittee;

(3) change [~~Change~~] an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) change [~~Change~~] quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgement of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification, provided however, that this provision shall not be used to add a waste stream other than desalination brine to the permit of a Class I injection well issued without the opportunity for a contested case hearing;

(5) change [~~Change~~] construction requirements, provided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) amend [~~Amend~~] a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to Standards).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402142
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 239-6087

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CHAPTER 331. UNDERGROUND INJECTION CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §331.2

The Texas Commission on Environmental Quality (commission) proposes an amendment to §331.2.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The proposed amendment will implement House Bill (HB) 2567, 78th Legislature, 2003, and its amendment to Texas Water Code, §27.021. Changes to 30 TAC Chapters 50, 55, and 305 are also proposed in this issue of the *Texas Register* to implement HB 2567.

HB 2567 allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking.

HB 2567 may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the potential for a contested case hearing under the provisions of Texas Water Code, §27.018. The commission's ability to hold a discretionary hearing under the provisions of Texas Water Code, §5.102(b) was not amended by HB 2567. Other options for disposal of desalination brine are Class V injection wells, evaporation ponds, and surface discharge under a Texas Pollutant Discharge Elimination System permit.

HB 2567 does not define the terms "brine" or "desalination operation." The proposed amendment defines "desalination brine" and "desalination operation" to assist the regulated community and the public in understanding the terms when they are used to implement HB 2567 in Chapters 50, 55, and 305. Desalination operations produce useable water and a waste stream. The waste stream, referred to as "brine produced by a desalination operation" in HB 2567, is defined as "desalination brine" in this proposal. "Desalination brine" is often referred to as "reject water" by the desalination industry. The composition of desalination brine will vary, depending on the source water and the desalination process used. All Class I injection well permit applications require that a waste analysis plan be submitted that provides a description and analysis of the chemical and physical characteristics of the waste streams proposed to be injected. Desalination brine may be non-hazardous or hazardous waste depending on the results of the waste analysis. The statutory and regulatory requirements for disposal of hazardous brine may be more stringent than the requirements for disposal of non-hazardous brine.

SECTION DISCUSSION

Section 331.2, Definitions, adds "desalination brine" and "desalination operation" as new paragraphs (29) and (30) and renumbers subsequent definitions. The commission has chosen the term "desalination brine" to describe "the waste stream produced by a desalination operation" to distinguish and separate this type of brine from other regulated and commercial brines. The commission is defining the term "desalination operation" as "the process which produces water of useable quality by desalination" to provide guidance regarding the scope of the term "operation" and to indicate that desalination brine is the waste stream produced by the process of desalination.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Program Specialist in the Federal Grants and Strategic Planning Section, determined that for the first five-year period the proposed amendment is in effect, there will be no adverse fiscal implications for the agency or any other state agency. The amendment implements HB 2567, 78th Legislature, 2003, which simplifies and expedites the permitting process for Class I injection well permits for the disposal of desalination brine. The bill allows the commission to issue a permit to dispose of brine produced by a desalination operation in a Class I injection well without providing the opportunity for a contested case hearing, as long as all requirements for a Class I injection well permit are met. Public notice of, and the opportunity to comment on, a permit application will not be affected by this rulemaking. Ms. Washburn also determined that there will be no adverse fiscal impact to units of local government as a result of the proposed amendment.

PUBLIC BENEFITS AND COSTS

Ms. Washburn determined that for the first five years the proposed amendment is in effect, the anticipated public benefit will be indirect. This rulemaking may expedite the approval of Class I injection well permits for the disposal of desalination brine by removing the possibility of a contested case hearing. If this expedited permitting encourages entities to open desalination operations, then an immediate impact could be an increase in the supply of potable water in those areas where desalination is occurring. The public may benefit from the construction and operation of future desalination operations, because potable water produced from these operations can be used for municipal, domestic, and industrial purposes. Ms. Washburn also determined that there will be no adverse fiscal impacts to the public or individuals as a result of the proposed amendment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Ms. Washburn also determined that there will be no significant fiscal implications to small or micro-businesses as a result of implementation of the proposed amendment for the first five years it is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposal is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposal does not meet the definition of a "major environmental rule" because the specific intent of the rule is to define the terms "desalination brine" and "desalination operation." These terms are used in other chapters of this title to provide that an application for a Class I injection well for the disposal of brine from a desalination operation is not subject to the hearing requirements of Texas Water Code, §27.018 and Texas Government Code, Chapter 2001 (contested case hearing). The rule substantially advances this purpose by defining the terms "desalination brine" and "desalination operation." The proposal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs

because it merely defines terms used in other rules. The proposal is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because the applicant for the permit must meet all the statutory and regulatory requirements for issuance of a permit for a Class I injection well.

In addition, the proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0225 because the proposal does not: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) seek to adopt a rule solely under the general powers of the agency.

The proposal does not exceed a standard set by federal law because there are no such corresponding federal standards requiring specific definitions of these terms. Furthermore, the proposal does not exceed an express requirement of state law because the proposal is mandated by state law. In addition, the proposal does not exceed the requirements of the delegation agreement concerning injection wells because the delegation agreement does not require specific definitions of these terms. Finally, this proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of Texas Water Code, §27.019 and §27.021.

The commission invites public comment on the draft regulatory impact analysis determination. All comments will be addressed in the publication of the final regulatory analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendment and performed an assessment of whether the amendment constitutes a taking under Texas Government Code, §2007.043. The specific purpose of the proposed amendment is to define the terms "desalination brine" and "desalination operation." These terms are used in other chapters of this title to provide that an application for a Class I injection well for the disposal of brine from a desalination operation is not subject to the hearing requirements of Texas Water Code, §27.018 and Texas Government Code, Chapter 2001 (contested case hearing).

The proposed amendment would substantially advance the previously-stated purpose by defining the terms "desalination brine" and "desalination operation."

The proposed amendment does not impose any burden on private real property and it does not result in any benefit to society from the proposed use of private real property because the proposed amendment does not directly apply to the ownership or use of a particular parcel of private real property. In addition, because the amendment does not apply to the ownership or use of a particular parcel of private real property, the amendment does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond any reduction in value that would otherwise exist in the absence of the proposed amendment.

Therefore, promulgation and enforcement of this proposed amendment would not be a statutory or a constitutional taking of private real property.

The commission has no reasonable alternative actions that could accomplish the specified purpose of defining the terms "desalination brine" and "desalination operation." Without the proposed amendment, the definitions related to HB 2567, 78th Legislature, 2003 would remain outdated.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in §505.11. Therefore, the proposed rule is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-062-331-WS. Comments must be received by 5:00 p.m., May 10, 2004. For further information, please contact Fred Duffy of the Waste Permits Division at (512) 239-6891 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and §27.021, which provides that permits for disposal of brine produced by desalination operations are not subject to the hearing requirements of §27.018 and Texas Government Code, Chapter 2001.

The proposed amendment implements Texas Water Code, §27.021.

§331.2. Definitions.

General definitions can be found in Chapter 3 of this title (relating to Definitions). The following words and terms, when used in this chapter, have the following meanings.

(1) - (8) (No change.)

(9) Area of review--The area surrounding an injection well described according to the criteria set forth in §331.42 of this title (relating to Area of Review) or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 [~~one fourth of a~~] mile or a number calculated according to the criteria set forth in §331.42 of this title.

(10) - (28) (No change.)

(29) Desalination brine--The waste stream produced by a desalination operation containing concentrated salt water, other naturally occurring impurities, and additives used in the operation and maintenance of a desalination operation.

(30) Desalination operation--A process which produces water of usable quality by desalination.

(31) [~~(29)~~] Disposal well--A well that is used for the disposal of waste into a subsurface stratum.

(32) [~~(30)~~] Disturbed salt zone--Zone of salt enveloping a salt cavern, typified by increased values of permeability or other induced anomalous conditions relative to undisturbed salt which lies more distant from the salt cavern, and is the result of mining activities

during salt cavern development and which may vary in extent through all phases of a cavern including the post-closure phase.

(33) [~~(31)~~] Drilling mud--A heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.

(34) [~~(32)~~] Drywell--A well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

(35) [~~(33)~~] Excursion--The movement of mining solutions into a designated monitor well.

(36) [~~(34)~~] Existing injection well--A Class I well which was authorized by an approved state or EPA-administered program before August 25, 1988 or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under §335.1 of this title (relating to Definitions).

(37) [~~(35)~~] Fluid--Material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

(38) [~~(36)~~] Formation--A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

(39) [~~(37)~~] Formation fluid--Fluid present in a formation under natural conditions.

(40) [~~(38)~~] Fresh water--Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this subchapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

(i) it is used as drinking water for human consumption; or

(ii) the groundwater contains fewer than 10,000 milligrams per liter (mg/L) total dissolved solids; and

(iii) it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 mg/L total dissolved solids can be put to a beneficial use.

(41) [~~(39)~~] Groundwater--Water below the land surface in a zone of saturation.

(42) [~~(40)~~] Groundwater protection area--A geographic area (delineated by the state under the Safe Drinking Water Act, 42 United States Code, §300j-13) near and/or surrounding community and non-transient, non-community water systems that use groundwater as a source of drinking water.

(43) [~~(41)~~] Hazardous waste--Hazardous waste as defined in §335.1 of this title (relating to Purpose, Scope, and Applicability).

(44) [~~(42)~~] Improved sinkhole--A naturally occurring karst depression or other natural crevice found in carbonate rocks, volcanic terrain, and other geologic settings which has been modified by man for the purpose of directing and emplacing fluids into the subsurface.

(45) [~~(43)~~] Injection interval--That part of the injection zone in which the well is authorized to be screened, perforated, or in which the waste is otherwise authorized to be directly emplaced.

(46) [~~(44)~~] Injection operations--The subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

(47) [~~(45)~~] Injection well--A well into which fluids are being injected. Components of an injection well annulus monitoring system are considered to be a part of the injection well.

(48) [~~(46)~~] Injection zone--A formation, a group of formations, or part of a formation that receives fluid through a well.

(49) [~~(47)~~] In service--The operational status when an authorized injection well is capable of injecting fluids, including times when the well is shut-in and on standby status.

(50) [~~(48)~~] Intermediate casing--A string of casing with diameter intermediate between that of the surface casing and that of the smaller long-string or production casing, and which is set and cemented in a well after installation of the surface casing and prior to installation of the long-string or production casing.

(51) [~~(49)~~] Large capacity cesspool--A cesspool that is designed for a flow of greater than 5,000 gallons per day.

(52) [~~(50)~~] Large capacity septic system--A septic system that is designed for a flow of greater than 5,000 gallons per day.

(53) [~~(51)~~] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(54) [~~(52)~~] Liner--An additional casing string typically set and cemented inside the long string casing and occasionally used to extend from base of the long string casing to or through the injection zone.

(55) [~~(53)~~] Long string casing or production casing--A string of casing that is set inside the surface casing and that usually extends to or through the injection zone.

(56) [~~(54)~~] Lost circulation zone--A term applicable to rotary drilling of wells to indicate a subsurface zone which is penetrated by a wellbore, and which is characterized by rock of high porosity and permeability, into which drilling fluids flow from the wellbore to the degree that the circulation of drilling fluids from the bit back to ground surface is disrupted or "lost."

(57) [~~(55)~~] Mine area--The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

(58) [~~(56)~~] Mine plan--A map of adopted mine areas and an estimated schedule indicating the sequence and timetable for mining and any required aquifer restoration.

(59) [~~(57)~~] Monitor well--Any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other pre-injection units.

(60) [~~(58)~~] Motor vehicle waste disposal well--A well used for the disposal of fluids from vehicular repair or maintenance activities, including, but not limited to, repair and maintenance facilities for cars, trucks, motorcycles, boats, railroad locomotives, and airplanes.

(61) [~~(59)~~] New injection well--Any well, or group of wells, not an existing injection well.

(62) [~~(60)~~] New waste stream--A waste stream not permitted.

(63) [~~(61)~~] Non-commercial facility--A Class I permitted facility which operates only non-commercial wells.

(64) [~~(62)~~] Non-commercial underground injection control (UIC) Class I well facility--A UIC Class I permitted facility where only non-commercial wells are operated.

(65) [~~(63)~~] Non-commercial well--An underground injection control Class I injection well which disposes of wastes that are generated on-site, at a captured facility or from other facilities owned or effectively controlled by the same person.

(66) [~~(64)~~] Off-site--Property which cannot be characterized as on-site.

(67) [~~(65)~~] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access, is also considered on-site property.

(68) [~~(66)~~] Out of service--The operational status when a well is not authorized to inject fluids, or the well itself is incapable of injecting fluids for mechanical reasons, maintenance operations, or well workovers or when injection is prohibited due to the well's inability to comply with the in-service operating standards of this chapter.

(69) [~~(67)~~] Permit area--The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

(70) [~~(68)~~] Plugging--The act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

(71) [~~(69)~~] Point of injection--For a Class V well, the last accessible sampling point prior to fluids being released into the subsurface environment.

(72) [~~(70)~~] Pollution--The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

(i) to humans, animal life, vegetation, or property; or

(ii) to public health, safety, or welfare; or

(B) that impairs the usefulness or the public enjoyment of the water for any lawful and reasonable purpose.

(73) [~~(71)~~] Pre-injection units--The on-site above-ground appurtenances, structures, equipment, and other fixtures including the injection pumps, filters, tanks, surface impoundments, and piping for wastewater transmission between any such facilities and the well that are or will be used for storage or processing of waste to be injected, or in conjunction with an injection operation.

(74) [~~(72)~~] Production area--The area defined by a line generally through the outer perimeter of injection and recovery wells used for mining.

(75) [~~(73)~~] Production area authorization--A document, issued under the terms of an injection well permit, approving the initiation of mining activities in a specified production area within a permit area.

(76) [~~(74)~~] Production zone--The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

(77) [~~(75)~~] Radioactive waste--Any waste which contains radioactive material in concentrations which exceed those listed in 10 Code of Federal Regulations Part 20, Appendix B, Table II, Column 2 and as amended.

(78) [~~(76)~~] Restoration demonstration--A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

(79) [~~(77)~~] Restored aquifer--An aquifer whose local groundwater quality has, by natural or artificial processes, returned to levels consistent with restoration table values or better as verified by an approved sampling program.

(80) [~~(78)~~] Salt cavern--A hollowed-out void space that has been purposefully constructed within a salt stock, typically by means of solution mining by circulation of water from a well or wells connected to the surface.

(81) [~~(79)~~] Salt cavern confining zone--A zone between the salt cavern injection zone and all underground sources of drinking water and freshwater aquifers, that acts as a barrier to movement of waste out of a salt cavern injection zone, and consists of the entirety of the salt stock excluding any portion of the salt stock designated as an underground injection control (UIC) Class I salt cavern injection zone or any portion of the salt stock occupied by a UIC Class II or Class III salt cavern or its disturbed salt zone.

(82) [~~(80)~~] Salt cavern injection interval--That part of a salt cavern injection zone consisting of the void space of the salt cavern into which waste is stored or disposed of, or which is capable of[~~,~~] receiving waste for storage or disposal.

(83) [~~(81)~~] Salt cavern injection zone--The void space of a salt cavern that receives waste through a well, plus that portion of the salt stock enveloping the salt cavern, and extending from the boundaries of the cavern void outward a sufficient thickness to contain the disturbed salt zone, and an additional thickness of undisturbed salt sufficient to ensure that adequate separation exists between the outer limits of the injection zone and any other activities in the domal area.

(84) [~~(82)~~] Salt cavern solid waste disposal well or salt cavern disposal well--For the purposes of this chapter, regulations of the commission, and not to underground injection control (UIC) Class II or UIC Class III wells in salt caverns regulated by the Texas Railroad Commission, a salt cavern disposal well is a type of UIC Class I injection well used:

(A) to solution mine a waste storage or disposal cavern in naturally occurring salt; and/or

(B) to inject hazardous, industrial, or municipal waste into a salt cavern for the purpose of storage or disposal of the waste.

(85) [~~(83)~~] Salt dome--A geologic structure that includes the caprock, salt stock, and deformed strata surrounding the salt stock.

(86) [~~(84)~~] Salt stock--A geologic formation consisting of a relatively homogeneous mixture of evaporite minerals dominated by halite (NaCl) that has migrated from originally tabular beds into a vertical orientation.

(87) [~~(85)~~] Sanitary waste--Liquid or solid waste originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned.

(88) [~~(86)~~] Septic system--A well that is used to emplace sanitary waste below the surface, and is typically composed of a septic tank and subsurface fluid distribution system or disposal system.

(89) [~~(87)~~] Stratum--A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

(90) [~~(88)~~] Subsurface fluid distribution system--An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

(91) [~~(89)~~] Surface casing--The first string of casing (after the conductor casing, if any) that is set in a well.

(92) [~~(90)~~] Temporary injection point--A method of Class V injection that uses push point technology (injection probes pushed into the ground) for the one-time injection of fluids into or above an underground source of drinking water.

(93) [~~(91)~~] Total dissolved solids (TDS)--The total dissolved (filterable) solids as determined by use of the method specified in 40 Code of Federal Regulations Part 136, as amended.

(94) [~~(92)~~] Transmissive fault or fracture--A fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

(95) [~~(93)~~] Underground injection--The subsurface emplacement of fluids through a well.

(96) [~~(94)~~] Underground injection control (UIC)--The program under the federal Safe Drinking Water Act, Part C, including the approved Texas state program.

(97) [~~(95)~~] Underground source of drinking water (USDW)--An "aquifer" or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the groundwater contains fewer than l0,000 milligrams per liter total dissolved solids; and

(C) which is not an exempted aquifer.

(98) [~~(96)~~] Upper limit--A parameter value established by the commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

(99) [~~(97)~~] Verifying analysis--A second sampling and analysis of control parameters for the purpose of confirming a routine sample analysis which indicated an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

(100) [~~(98)~~] Well--A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension, a dug hole whose depth is greater than the largest surface dimension, an improved sinkhole, or a subsurface fluid distribution system but does not include any surface pit, surface excavation, or natural depression.

(101) [~~(99)~~] Well injection--The subsurface emplacement of fluids through a well.

(102) [~~(100)~~] Well monitoring--The measurement by on-site instruments or laboratory methods of any chemical, physical, radiological, or biological property of the subsurface strata or their contained fluids penetrated by the wellbore.

(103) [~~(101)~~] Well stimulation--Several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, including, but not limited to, surging, jetting, blasting, acidizing, and hydraulic fracturing.

(104) [~~(102)~~] Workover--An operation in which a downhole component of a well is repaired, the engineering design of the well is changed, or the mechanical integrity of the well is compromised. Workovers include operations such as sidetracking, the addition of perforations within the permitted injection interval, and the addition of liners or patches. For the purposes of this chapter, workovers do not include well stimulation operations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402143
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 239-6087

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CHAPTER 339. GROUNDWATER PROTECTION RECOMMENDATION LETTERS AND FEES

30 TAC §§339.1 - 339.3

The Texas Commission on Environmental Quality (commission or TCEQ) proposes new §§339.1 - 339.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement House Bill 3442, 78th Legislature, 2003, by establishing, in rule, the amount, applicability, and collection of fees and procedures to process expedited requests for groundwater protection recommendation letters. Applicants for Railroad Commission of Texas (RRC) authorizations must submit these letters with their RRC applications.

SECTION BY SECTION DISCUSSION

Proposed new §339.1, Purpose, states that the purpose of the chapter is to authorize the processing of requests for groundwater protection recommendation letters required by the RRC for approval of an application. The letters recommend the depth,

or depths, that usable-quality groundwater should be isolated or protected in oil and gas operations. At the present time, the executive director provides these letters to applicants for RRC authorizations, but no commission rules address the topic.

Proposed new §339.2, Applicability, states that this chapter applies to Texas Commission on Environmental Quality groundwater protection recommendation letters required by RRC rules (oil and gas production) or Texas Water Code (TWC), §27.033 (disposal wells). This section also states that the chapter applies to the expedited processing of requests for some of these letters and sets fees for expedited processing as authorized by TWC, §5.701. The commission does not provide expedited processing of requests for groundwater protection letters for the drilling and use of disposal wells permitted by the RRC under TWC, §27.033.

Proposed new §339.3, Groundwater Protection Letter Requests, Expedited Processing, and Fee, describes how an applicant shall submit a request for a groundwater protection recommendation letter on a form approved by the executive director; establishes procedures for the processing of requests for groundwater protection recommendation letters; and sets the fee for expedited processing of groundwater protection recommendation letters at $75. This section also states that the executive director shall establish procedures for the expedited processing of requests for groundwater protection recommendation letters. The executive director has set an internal goal of processing these letters within one working day and expects to be able to meet this goal in most cases.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management, determined that for the first five-year period the proposed new rules are in effect, there will be fiscal implications for state government but not for units of local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement sections of House Bill 3442, 78th Legislature, 2003. Certain provisions in the bill amended the TWC to allow the TCEQ to assess a $75 fee for the expedited processing of a request for a groundwater protection recommendation letter for drilling, plugging, or cathodic protection of oil or gas wells. These letters, which are then provided to the RRC, and state the total depth of surface casing needed during the drilling of oil and gas wells to protect usable groundwater in the state. The TCEQ recommendation letters are required by RRC regulations for the processing of RRC permit applications. The letters have been provided for about 50 years (since 1956).

Oil and gas operators would pay the fee only if they choose to request expedited processing of a groundwater protection recommendation letter from the TCEQ's Surface Casing Team. A fee for an expedited letter was not previously assessed to an applicant. A letter that is not expedited will not require a fee. The executive director has set an internal goal of processing these expedited letters to applicants within one working day.

House Bill 1, 78th Legislature, 2003 appropriated the TCEQ $225,000 in Fiscal Year (FY) 2004 and the same amount in FY 2005 to cover the cost of processing expedited letters for well drilling. The agency estimates collecting approximately $400,000 in fee revenue each FY and processing approximately 5,300 expedited letters each year. Fee revenue is deposited into the Water Resource Management Account.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be compliance with state law.

No individuals or businesses are required to comply with the proposed new rules. Individuals or businesses that choose to request expedited processing of a groundwater protection recommendation letter from the Surface Casing Team will be charged a $75 fee.

Oil and gas operators seeking the expedited processing of a request for a groundwater protection recommendation letter for drilling, plugging, or cathodic protection of oil or gas wells will pay a fee of $75 for each expedited letter. The total costs to a particular oil or gas operator would depend upon the number of expedited requests that were made.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed new rules for small or micro-businesses. Oil and gas operators that are small or micro-businesses would not be assessed a fee if they request a groundwater protection recommendation letter for drilling, plugging, or cathodic protection of oil or gas wells. However, those operators who choose to request expedited processing of a groundwater protection recommendation letter from the Surface Casing Team will be charged a $75 fee.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed new rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal does not meet the definition of a "major environmental rule" because the specific intent of the rules is to require an applicant to pay a fee of $75 only if he or she chooses to obtain expedited processing of a groundwater protection recommendation letter. These rules substantially advance this purpose by providing for expedited processing of requests for these letters upon payment of such a fee. This proposal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because no fee is required for a groundwater protection recommendation letter; these rules only set a fee for expedited processing of a request for these letters. This proposal is not anticipated to adversely affect in a material way the environment or the public health and safety of the state or a sector of the state because it sets a fee only for expedited processing.

In addition, this proposal does not exceed the four applicability requirements of Texas Government Code, §2001.0025(a)(1) - (4) in that this proposal does not: 1) exceed a standard set by federal

law; 2) exceed an express requirement of state law; 3) exceed a requirement of a delegation agreement; or 4) propose to adopt a rule solely under the general powers of the agency.

This proposal does not exceed a standard set by federal law because there are no such corresponding federal standards regarding fees for expedited processing of groundwater protection recommendation letters. Further, this proposal does not exceed an express requirement of state law because the fee for expedited processing of a groundwater protection recommendation letter does not exceed the limit of $75 set by TWC, §5.701(r). This proposal does not exceed the requirements of the delegation agreement concerning injection wells because the commission does not regulate the wells that are the subject of the letters and because the delegation agreement does not establish express requirements for fees for processing of expedited groundwater protection recommendation letters. Finally, this proposal is not adopted solely under the general powers of the agency, but is adopted under the specific provisions of TWC, §§5.701(r), 27.019, 27.021, 27.033.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's assessment indicates that Texas Government Code, Chapter 2007 applies to these proposed rules and that these rules do not constitute a statutory or constitutional taking.

The specific purpose of these proposed rules is to allow an applicant for an RRC authorization to pay a fee of $75 to obtain expedited processing of a groundwater protection recommendation letter. House Bill 3442, 78th Legislature, 2003, amended TWC to set a maximum fee for expedited processing of a request for a letter from the executive director stating the total depth of surface casing needed during the drilling of wells to protect usable-quality groundwater in the state and required for the processing of certain permits from the RRC to $75.

This proposal substantially advances the purpose stated in the preceding paragraph by providing for the expedited processing of requests for these letters upon payment of a fee of $75.

This proposal does not place any burden on real property and it does not obtain any benefit to society from the proposed use of private real property because it does not directly apply to the ownership or use of a particular parcel of private real property.

Promulgation of this proposal will not constitute a taking because there is no fee for a groundwater protection recommendation letter; the fee is only incurred if an applicant requests expedited processing of a groundwater protection recommendation letter. The fee does not directly apply to the ownership or use of a particular parcel of private real property.

There are alternative actions that the commission may take regarding this proposal, such as not charging a fee or charging a lower fee than $75; however, it is reasonable to charge a fee of $75 because that amount is estimated to be necessary to cover the costs of expedited processing of requests for these letters.

This proposal does not burden an owner of real property in a manner that would be a statutory or constitutional taking. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules. This proposal simply sets a fee to be paid when an applicant opts to request expedited processing of a groundwater protection recommendation letter.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed these proposed rules for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that these proposed rules will not have direct or significant adverse effect on any coastal natural resources areas, nor will they have a substantive effect on commission actions subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., May 10, 2004, and should reference Rule Project Number 2004-001-339-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §5.701(r), relating to fees; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §27.032, regarding information required of applicants by the RRC; §27.033, regarding letters from the executive director; §27.051, regarding the issuance of permits; and §27.0511, regarding conditions of certain permits.

The proposed new sections implement TWC, §5.701(r).

§339.1. Purpose.

This chapter authorizes the executive director to provide groundwater protection recommendation letters to the Railroad Commission of Texas for use in processing applications. This chapter also establishes the fee for the expedited processing of requests for groundwater protection recommendation letters.

§339.2. Applicability.

This chapter applies to Texas Commission on Environmental Quality groundwater protection recommendation letters required by Railroad Commission of Texas (RRC) rules or Texas Water Code, §27.033 except that §339.3(b) and (c) of this title (relating to Groundwater Protection Letter Requests, Expedited Processing, and Fee) do not apply to letters related to drilling and use of disposal wells permitted by the RRC. The executive director provides these letters to applicants for authorizations from the RRC. The letters contain a recommendation to the RRC on the depth, or depths, that usable-quality groundwater should be isolated or protected in oil and gas operations. This chapter also applies to the expedited processing of requests for these letters and sets fees for expedited processing as authorized by Texas Water Code, §5.701.

§339.3. Groundwater Protection Letter Requests, Expedited Processing, and Fee.

(a) The applicant shall submit a request for a groundwater protection recommendation letter on a form approved by the executive director. The form must contain all information required by the executive director before a request will be processed.

(b) The executive director shall establish procedures for expedited processing of requests for groundwater protection recommendation letters.

(c) The fee for expedited processing of a request for a groundwater protection recommendation letter is $75 and must be in the form of a check, money order, cashier's check, or electronic funds transfer made payable to the Texas Commission on Environmental Quality. The fee must be paid before the request will be processed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402148
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 239-0348

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 5. BOARDS FOR LEASE OF STATE-OWNED LANDS

CHAPTER 201. OPERATIONS OF THE TEXAS PARKS AND WILDLIFE DEPARTMENT AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD FOR LEASE

31 TAC §201.4

The Texas General Land Office proposes an amendment to TAC, Title 31, Part 5, Chapter 201, §201.4 related to Deposits. This section relates to the disposition of payments received by the Boards for Lease of State-Owned Lands. The proposed amendment conforms the rule to an amendment to Texas Natural Resources Code §34.018 by Acts 1993, 73rd Leg., ch. 679, §62, eff. Sept. 1, 1993. The change is made as a result of §2001.039 (Agency Review of Existing Rules) of the Government Code that was adopted in the August 22, 2003, edition of the *Texas Register* (28 TexReg 6957).

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no negative fiscal impact to state or local government as a result of administering the section as amended.

Marshall Enquist, Attorney with the Energy Section, has determined that the amendment is inconsequential as regards public benefit or cost.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no impact on local employment. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Deborah Cantu, Legal Services, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78711 or by fax at (512) 463-6311, no later than 30 days after publication.

The amendment to this section is proposed under Texas Natural Resources Code §31.051, which authorizes the Commissioner of the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendment affects Section 34.018 of the Texas Natural Resources Code.

§201.4. Deposits.

Payments received by a Board for Lease are payable to the commissioner of the General Land Office, who will deposit receipts with the state treasurer to the credit of the appropriate special mineral account [~~fund~~] for the agency involved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 29, 2004.

TRD-200402175
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
Boards for Lease of State-Owned Lands
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 305-8598

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 21. RIGHT OF WAY

SUBCHAPTER M. QUARRY AND PIT SAFETY

43 TAC §§21.701 - 21.723

The Texas Department of Transportation (department) proposes new §§21.701-21.723, concerning quarry and pit safety.

EXPLANATION OF PROPOSED NEW SECTIONS

House Bill 2847, 78th Legislature, Regular Session, 2003, transferred all powers, duties, functions, and activities performed by the Railroad Commission of Texas under Texas Aggregate Quarry and Pit Safety Act, Chapter 133, Natural Resources Code, to the Texas Department of Transportation.

The rules previously adopted by the Railroad Commission in Title 16, Subchapter E, concerning quarry and pit safety, have been transferred to the department. The department proposes the repeal of Title 16, Subchapter E and simultaneously proposes new §§21.701-21.723 in an amended form. Due to fundamental differences in structure and operation between the Railroad Commission and the department, the rules cannot be implemented by the department in their current form, and have been amended in a form that can be implemented by the department.

References to specific Railroad Commission departments or positions have been changed to specify the appropriate counterparts in the department. Several provisions designed solely to place the program in its proper context within the Railroad Commission's structure, as well as references to federal statutes and funding provisions that affect the operations of the Railroad Commission but not the department, have been deleted. Certain other provisions were adopted by the Railroad Commission at the inception of the program to provide the regulated community with a transition period, but they have since expired. Those provisions have likewise been deleted. Further changes have been made to either remove redundancies from or clarify language in the existing rules.

FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Zane L. Webb, P.E., Director, Maintenance Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Mr. Webb has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be rules that accurately reflect law. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to Zane L. Webb, P.E., Director, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on May 10, 2004.

STATUTORY AUTHORITY: The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Natural Resources Code, §133.011, which provides the commission with authority to adopt rules regarding the Texas Aggregate Quarry and Pit Safety Act, and House Bill 2847, which transfers the powers performed by the Railroad Commission of Texas under Chapter 133, Natural Resources Code, to the department.

CROSS REFERENCE TO STATUTE: Texas Natural Resources Code, §133.011.

§21.701. Purpose and Scope.

(a) Purpose. The Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, Chapter 133, gives the department responsibility for overseeing the identification, certification, and construction necessary to regulate public access to certain aggregate quarries and pits.

(b) Scope. This subchapter applies to all active, inactive, or abandoned quarries and pits located in whole or part within the boundaries of Texas.

§21.702. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abandoned--Having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

(2) Act--The Texas Aggregate Quarry and Pit Safety Act, Natural Resources Code, Chapter 133, and this subchapter.

(3) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other similar substance.

(4) Barrier--An object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic.

(5) Berm--A ridge of refuse, overburden, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

(6) Commission--Texas Transportation Commission.

(7) Department--Texas Department of Transportation.

(8) Director--The director of the Maintenance Division of the department, or the director's designee.

(9) Division--The Maintenance Division of the department.

(10) In hazardous proximity to a public road--That distance beginning 200 feet from the outer edge of a roadway to the pit perimeter.

(11) Inactive quarry or pit--A site that includes an industrial aggregate extraction plant or any portion of a site that includes an industrial aggregate extraction plant, that although previously in aggregate production, is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(12) Operator--Any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

(13) Overburden--All materials displaced in an aggregate extraction operation that are not or reasonably would not be expected to be removed from the affected area.

(14) Owner--Any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

(15) Pit--An open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

(16) Public road or right of way--Every way publicly maintained or any part thereof as defined by Transportation Code, §541.302, and the decisions thereunder.

(17) Quarry--A site where aggregates are being or have been removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which a plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party that is not being currently used in the production of aggregates.

(18) Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

(19) Refuse--All waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(20) Responsible party--The current operator of the quarry or pit, or if no operator exists, the owner of the land in which the pit exists.

(21) Ridge--A lengthened elevation of overburden created in the aggregate production process.

(22) Roadway--The part of the public road intended for normal vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

(23) Setback distance--Distance from the outer right-of-way line of a public road or highway up to a distance of 25 feet.

(24) Site--The tract of land on which a pit is located, including the immediate area on which the plant used in the extraction of aggregates is located.

(25) Unacceptable unsafe location--A condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner that:

(A) presents a significant risk of harm to motorists by reason of the proximity of the pit to the roadway intersection;

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from entering the pit as the result of a motor vehicle collision at or near the intersection;

(C) is within 200 feet of the edge of a roadway; or

(D) in the opinion of the department, is at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as required by this subchapter.

§21.703. Form Availability.

(a) Forms for the application for a safety certificate, transfer of a safety certificate, safety certificate waiver, and for the notice of cessation of operations are available at the offices of the department.

(b) Forms are also available by writing to the Director, Maintenance Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

§21.704. Fees.

Each application for a safety certificate or transfer of a safety certificate and each notice of cessation of operations shall be accompanied by a fee. The fee schedule is as follows:

(1) safety certificate application for a non-governmental entity--$500;

(2) safety certificate transfer--$250;

(3) notice of cessation of operations--$500;

(4) governmental entity application for inactive or abandoned pit safety certificate--$350.

§21.705. Form and Content of Initial Inventory Report.

(a) Each report must be on the forms furnished by the department and must show the location, age, operational status, and current use of the quarry or pit to which the report applies.

(b) Only a single report under this subchapter is required when joint owners or operators or a combination of either exists.

(c) Only a single report is required for each owner or operator having multiple pit locations within the state.

(d) Only one accurate report relating to each quarry or pit is required.

§21.706. Barriers Required.

(a) A responsible party for an active pit in hazardous proximity to a public road must construct a barrier or other device between the public road adjoining the site and the pit.

(b) A responsible party for an abandoned or inactive pit which is both in hazardous proximity to a public road and in an unacceptable unsafe location must construct a barrier or other device between the public road adjoining the site and the pit.

(c) The responsible party may choose to slope the sidewalls of a pit in place of constructing a berm or barrier, provided that in the opinion of the responsible party such corrective measure better serves the public safety and provided that the slope shall not exceed 30 degrees from the horizontal.

(d) The barrier or other device must be completed not later than the 90th day after the day on which the responsible party receives a notice of approval from the department. An additional time of not more than 60 days may be granted by the department for good cause shown. If the responsible party must obtain an easement or right-of-entry before constructing the barrier or other device, the department may grant additional reasonable time to complete the barrier or other device.

(e) The department may grant a waiver from the barrier requirement if the responsible party submits an application to the department showing that:

(1) a governmental entity obtained a right-of-way and constructed a public road within 200 feet of the abandoned or inactive pit before August 26, 1991; and

(2) the pit has remained abandoned or inactive since the road was constructed.

§21.707. Barrier Construction Standards.

(a) A barrier may consist of guardrail, fence, berm, barricade, or other devices that in the opinion of the department will prevent the normal passage of vehicular traffic from entering a quarry or pit.

(b) Barriers shall be located as near as practicable to the edge of the quarry or pit section identified as being in hazardous proximity to a public road.

(c) The height of a barrier must reach a height of at least:

(1) 42 inches for quarries and pits located less than 50 feet of the roadway edge; or

(2) 27 inches for quarries and pits located 50 to 200 feet from the roadway edge.

(d) A barrier must have openings to the extent necessary for travel on the premises and for public road drainage, although drainage paths must be covered with protective material, substantial enough to turn away a motor vehicle.

(e) Construction material and design standards.

(1) Berms shall be constructed of material of sufficient consistency to resist weathering and inhibit erosion or sloughing, with a top width of no less than two feet and side slopes being in a ratio of two units in the horizontal direction to one unit in the vertical direction.

(2) Line posts for guardrails may be either wood or metal. Wooden posts shall be treated and no less than six inches in diameter. Metal posts shall be rolled or welded steel of the specification W6x8.5 or W6x9.0, as stated in American Institute for Steel Construction specifications for W-shape beams.

(3) Line posts for a 42-inch barrier shall be no less than 84 inches long with no less than 42 inches in the ground. Line posts for a 27-inch barrier shall be no less than 66 inches long with no less than 38 inches in the ground. Steel posts shall be set in concrete. The line posts shall be spaced no more than six feet three inches apart.

(4) Rail elements shall be of steel construction fabricated to develop continuous beam strength and be formed into not less than 12 inches wide and three inches deep. The rail thickness shall be of no less than 12 gauge.

(5) Rail elements shall be placed facing the public road. At least two rail elements shall be mounted on the vertical line posts for a 42-inch safety barrier. The bottom edge of the lower rail shall be 12 inches above the ground for a 42-inch barrier and 15 inches above the ground for a 27-inch barrier. The rails shall be spaced six inches apart.

(6) Rail elements shall be attached to the line posts by means of nuts and bolts which completely penetrate the line posts. Nuts and bolts shall conform to the requirements of ASTM Designation A307.

§21.708. Prohibition Against Opening Pits.

(a) No responsible party may open a new pit on a site for the extraction of aggregates if the pit perimeter will be less than 25 feet from the outer right of way line of any public road or highway ("the setback distance").

(b) No responsible party may open a new pit on a site for the extraction of aggregates in this state if the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan and receiving a safety certificate.

§21.709. Quarry Safety Plan.

The quarry safety plan required to be filed for new pits in hazardous proximity to a public road opened from and after November 1, 1991, must:

(1) detail how the applicant intends to comply with the safety provisions of this subchapter in opening and closing the pit;

(2) contain the information required by the safety certificate application;

(3) be filed on Form-2114;

(4) be in writing, certified and sworn to by the applicant; and

(5) be filed with the Maintenance Division at least 60 days prior to the opening of the pit.

§21.710. Sloping of Pit Sidewalls.

In the event the department determines that the pit location as detailed in the quarry safety plan or other application will contain substantial soil types of such density and other factors that will have a high probability of holding or impounding water when the pit is operating, inactive, or abandoned, and the impoundment of water poses a definite and determinable unreasonable risk to human health and safety, the department may require the responsible party to slope the sidewalls as an additional requirement to obtain a safety certificate or to alter the berm or barrier.

§21.711. Safety Certificate Required.

(a) A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written barrier waiver from the department.

(b) Except as provided in subsection (c) of this section, a responsible party must obtain a safety certificate prior to:

(1) opening a new pit in hazardous proximity to a public road and in an unacceptable unsafe location; or

(2) reopening, operating, or abandoning a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location.

(c) A responsible party is not required to obtain a safety certificate to operate or maintain an existing quarry or pit unless the department has notified the responsible party in writing that it must do so.

(d) Any responsible party who is utilizing a portion of a site for quarrying operations, including the stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(e) Any responsible party may operate the pit during a period that is described in §21.717 of this subchapter (relating to Recertification After Transfer of Title).

§21.712. Construction, Expansion, or Relocation of Roads.

(a) An entity that constructs, expands, or relocates a public road so that it causes an existing quarry or pit to be located in an unacceptable, unsafe location or in hazardous proximity to the public road, shall construct berms or barriers.

(b) The berms or barriers shall be constructed prior to the opening of the new, expanded, or relocated public road to travel by the public.

(c) The entity responsible for construction, expansion, or relocation of the public road shall report the same to the director within 90 days of the date the construction, expansion, or relocation is finally accomplished, including construction of the berms or barriers.

(d) The report shall be in writing, certified and sworn to by an authorized representative of the entity, and shall contain:

(1) the name, address, and telephone number of the entity responsible for the construction, expansion, or relocation of the public road;

(2) the distance of each adjoining pit perimeter from the nearest right-of-way line of the new, expanded, or relocated public road and the nearest intersection of any public or private road or driveway;

(3) a description of and a construction plan for any berm or barrier, specifying the material used;

(4) the name, address, and telephone number of the responsible party; and

(5) the name, address, and telephone number of the owner or owners if different from the responsible party.

§21.713. Form and Content of Safety Certificate Applications.

(a) Each pit for which a safety certificate is requested shall be addressed in a separate application.

(b) An application for a safety certificate must be on the form furnished by the department and contain:

(1) the name, address, and telephone number of the responsible party;

(2) the name, address, and telephone number of the owner or owners if different from the responsible party;

(3) the type of quarrying activities, if any, occurring on the site, or proposed to occur on the site;

(4) a brief description of the site, including the acreage outside and inside the pit;

(5) the distance of each pit perimeter from the nearest edge of each roadway that the site adjoins and the nearest intersection of any public road that the site adjoins and the nearest intersection of any public or private road or driveway;

(6) the depth in feet of the deepest excavation in the pit within 200 feet of a roadway edge as measured from the top of the pit highwall located between the pit and the roadway;

(7) a description of and a construction plan for any barrier or other device allowed by these regulations to be constructed, specifying the material to be used and the expected date of completion;

(8) for new pits in hazardous proximity to a public road, a statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to the public road, if any; and

(9) any other information or condition that meets the definition of an unacceptable unsafe location.

§21.714. Review of Applications.

(a) The department will notify an applicant by certified mail within ten days of receipt of an application for a safety certificate that the application:

(1) complies with the Act and is approved; or

(2) does not comply with the Act and is disapproved.

(b) A notice required under subsection (a)(2) of this section must specify the defects in the application. An applicant who receives this notice may submit, within 30 days of receipt of the notice, a modified application or plan.

(c) Within five days of receipt of a modified application under subsection (b) of this section, the department will approve or disapprove the application and will notify an applicant of its decision by certified mail.

(d) The department will give first priority to applications for sites that are abandoned or that are within the setback distance.

§21.715. Inspection of Barriers and Certificate Decision.

(a) Within 15 days of the time in which construction of barriers described in an approved application is required to be completed, the department may inspect those barriers to determine whether they meet the requirements.

(b) If, after inspection, the department determines that the barriers described in an approved application conform with the plan and comply with the Act, the department will issue a safety certificate to the responsible party.

(c) If, after inspection, the department determines that a barrier does not comply with the Act, the department will give the applicant written notice of any defects in that barrier and shall specify a reasonable time, not to exceed 60 days from the day notice is received, for the applicant to cure the defects.

§21.716. Transfer of Certificate after Transfer of Title.

(a) A responsible party holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files with the director a written affidavit that:

(1) all barriers between a pit and the nearest edge of any roadway comply with the Act; and

(2) there will be no change, on or after the day of the transfer of title or operation, in the:

(A) condition or location of a barrier; and

(B) distance of a pit perimeter from the nearest intersection of a public road and a private road or driveway.

(b) The transfer affidavit must be filed not later than the 30th day after the day on which the transfer of title to or operation of the quarry or pit occurs.

(c) The department will process and approve a transfer of a safety certificate not later than the 10th day after the day on which the department receives a completed transfer affidavit, including the application fee.

(d) At its option, the department may refuse to issue or approve the transfer of a certificate to a person who has violated the Act.

(e) The hypothecating, mortgaging, or other transfer of equitable title or a pledge of any assets to credits of the operator or owner shall not require the filing of a transfer affidavit.

(f) The department may revoke or disapprove the transfer of a safety certificate only if, after notice and hearing, the department determines that the holder of the certificate has violated the Act.

§21.717. Recertification after Transfer of Title.

(a) Unless a proper transfer affidavit is filed under this chapter, or an application for an amended certificate as required by subsection (b) of this section is pending, an existing safety certificate expires on the 90th day after the day on which a sale, lease, or other transfer of title to or operation of the quarry or pit for which the certificate was issued occurs.

(b) To obtain an amended or new safety certificate, a new owner, operator, lessor, or lessee must submit a safety certificate application as required by §21.713 of this subchapter (relating to Form and Content of Safety Certificate Applications), not later than the 30th day after the day on which the transfer of title to the quarry or pit occurs or a change in the activities of the quarry or pit necessitates.

(c) If an application for a new certificate has been submitted as required by subsection (b) of this section, the existing safety certificate continues in effect until the department's decision either approving or disapproving the new or amended certificate is issued and becomes final.

§21.718. Cessation of Operations.

(a) At least 60 days prior to cessation of operations, the responsible party who plans or intends to cease active operations in a quarry or pit shall notify the department of its intent, submit any additional plans the operator determines necessary to protect the public good and welfare after the cessation of operations, and include the applicable fee.

(b) Within 10 days after receipt of the notice, the department shall inspect the quarry or pit to ensure compliance with the provisions of this chapter and any additional plans submitted by the operator.

(c) Within 10 days after the inspection, the department shall notify the operator of compliance, or lack of compliance, and in the event of compliance shall issue a safety certificate.

(d) In the event of noncompliance, the department shall follow the procedures of §21.714 of this subchapter (relating to Review of Applications) and §21.715 of this subchapter (relating to Inspection of Barriers and Certificate Decision).

§21.719. Enforcement.

(a) Within its jurisdiction, the department shall have a right of entry to, upon, and through any aggregate quarry or pit without advance notice or search warrant, upon presentation of appropriate credentials.

(b) The operator shall maintain a copy of the safety certificate for each active quarry or pit at or near the location of the quarry or pit and shall make the safety certificate available for inspection by any authorized representative of the department, upon presentation of appropriate credentials.

(c) On receipt of a complaint of a violation of the Act or on its own motion, the department will give the responsible party written notice of each alleged violation, including the applicable statutory reference or rule violated, and the date, time, and place for a hearing.

(d) If, after notice and a hearing, the department determines that a violation has occurred, the director will make written findings of the actual or threatened violation and the required corrective work and shall prescribe a specific deadline, commensurate with the work to be done but not to exceed 90 days from the date of the order, for completion of the corrective work, unless an extension of time for good cause shown by the responsible party is granted by the director.

(e) If the responsible party fails to perform corrective work required by the department under subsection (d) of this section within 120 days after notice is given to the responsible party, the department may contract for the corrective work to be done at reasonable, customary, and ordinary costs applicable in the industry. Costs shall be submitted within 30 days of the date the work is finished, and the responsible party shall have 60 days to pay the costs or appeal the decision. In the event the responsible party fails to pay the costs as presented or fails timely to contest or appeal the costs as presented by the department, the department shall have the right to impose a fine or injunction as is warranted, consistent with the provisions of the Act and this subchapter.

§21.720. Civil Penalties.

(a) A responsible party who violates the Act after due notice is liable to the state for a civil penalty of not less than $500 or more than $5,000 for each act of violation on a first offense.

(b) A responsible party who violates the Act after due notice is liable to the state for a civil penalty of not less than $1,000 or more than $10,000 for each act of violation on a second and subsequent offense.

§21.721. Injunctive Relief.

(a) The department may enforce the Act by seeking an injunction or other appropriate remedy.

(b) On application for injunctive or other relief and a finding that a person is violating or has violated the Act, a court may grant the injunctive or other relief warranted by the facts.

§21.722. Recovery of Costs.

A responsible party is liable to the department for its costs incurred in undertaking corrective or enforcement action, including staff expenses, and for court costs and attorney's fees.

§21.723. Forms.

(a) The forms of Appendix A have been adopted by the commission for use pursuant to the Act and this subchapter. Reproduction of these forms is authorized for use by applicants to complete the filings required.

(b) The forms have been designated as follows:

(1) application for cessation of operations-- Form-2113;
Figure: 43 TAC §21.723(b)(1)

(2) application for quarry and pit safety certificate-- Form-2114;
Figure: 43 TAC §21.723(b)(2)

(3) application for transfer of quarry and pit safety certificate-- Form-2115; and
Figure: 43 TAC §21.723(b)(3)

(4) application for waiver of quarry and pit safety certificate-- Form-2116.
Figure: 43 TAC §21.723(b)(4)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402131
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 9, 2004
For further information, please call: (512) 463-8630

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

SUBCHAPTER D. STANDARDS AND REQUIREMENTS

10 TAC §80.52

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Department of Housing and Community Affairs has been automatically withdrawn. The amended section as proposed appeared in the September 19, 2003 issue of the *Texas Register* (28 TexReg 8081).

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402137

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SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

10 TAC §80.184

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Texas Department of Housing and Community Affairs has been automatically withdrawn. The new section as proposed appeared in the September 19, 2003 issue of the *Texas Register* (28 TexReg 8102).

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402138

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 330. MUNICIPAL SOLID WASTE

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.2

The Texas Commission on Environmental Quality has withdrawn from consideration the proposed amendments to §330.2 which appeared in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9053).

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402145
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 26, 2004
For further information, please call: (512) 239-0348

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SUBCHAPTER F. OPERATIONAL STANDARDS FOR SOLID WASTE LAND DISPOSAL SITES

30 TAC §330.114

The Texas Commission on Environmental Quality has withdrawn from consideration the proposed amendments to §330.114 which appeared in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9053).

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402146
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: March 26, 2004
For further information, please call: (512) 239-0348

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 5. BOARDS FOR LEASE OF STATE-OWNED LANDS

CHAPTER 201. OPERATIONS OF THE TEXAS PARKS AND WILDLIFE DEPARTMENT AND TEXAS DEPARTMENT OF CRIMINAL JUSTICE BOARD FOR LEASE

31 TAC §201.4

The General Land Office has withdrawn from consideration the proposed amendment to §201.4 which appeared in the November 14, 2003, issue of the *Texas Register* (28 TexReg 10080).

Filed with the Office of the Secretary of State on March 29, 2004.

TRD-200402174

Larry L. Laine
Chief Clerk, Deputy Land Commissioner
Board for Lease of State-Owned Lands
Effective date: March 29, 2004
For further information, please call: (512) 305-8598

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.501

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §355.501, without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8475) and will not be republished.

The amendments were undertaken in order to add the calculations of an upper payment limit and reimbursement rate for clients eligible for only Medicare services as Qualified Medicare Beneficiaries (QMBs) and the assurance that the methodology used for trending historical costs for calculating upper payment limits and rates is comparable to that used for trending fee-for-service costs.

HHSC received no comments regarding adoption of the amendments.

The amendment is adopted under the Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payment under Human Resources Code, Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402152
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: April 15, 2004
Proposal publication date: October 3, 2003
For further information, please call: (512) 424-6576

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CHAPTER 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §371.206

The Health and Human Services Commission (HHSC or Commission) adopts the amendment to §371.206(b), concerning Denials and Recoupments for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contracted Hospitals, with a change to the proposed text as published in the January 30, 2004, issue of the *Texas Register* (29 TexReg 741). The text of the rule will be republished. Section 371.206 is being amended to comply with the federal claim deadlines associated with the fiscal agent arrangement. The Texas Medicaid program transition from a health insuring agent arrangement to a fiscal agent arrangement necessitates that change.

The Commission adopts the amendment to §371.206(b), with the change, in order to be consistent with the Commission's previously adopted appeals rules. The adopted rule is effective twenty days after submission to the Secretary of State.

The Commission received a written comment concerning §371.206(b) during the 30-day comment period from January 30, 2004 to February 29, 2004. A summary of the written comment and the Commission's response follows.

Comment: The Commission received a comment from the Appeals Unit, Medicaid/CHIP, Resolution Services, HHSC, requesting that the time frame for the hospital to submit an outpatient claim be changed from the proposed ninety-five days to one hundred twenty days, in order to be consistent with the Commission's previously adopted appeals rules.

Response: The Commission agrees with the comment by the Appeals Unit, Medicaid/CHIP, Resolution Services, HHSC, and will revise the proposed ninety-five day time frame to a one hundred twenty day time frame, in order to be consistent with the Commission's previously adopted appeal rules. The revision to a one hundred twenty day time frame remains consistent with the applicable federal claim payment deadlines.

The amendment is adopted under authority granted to HHSC by §531.033, Texas Government Code, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and under §531.021 (a), Texas Government Code, which authorizes HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§371.206. Denials and Recoupments for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contracted Hospitals.

(a) Reviews conducted under the Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contracting programs may result in denials of claims. The Texas Health and Human Services Commission (Commission) will notify the hospital in writing of the denial decision, and instruct the claims administrator to recoup payment. If a hospital claim is denied for lack of medical necessity or for being provided in an inappropriate setting, the Commission will consider for denial physician claims associated with the hospital admission or service when such claims can be identified and are deemed to be the result of inappropriate admission orders. Types of denials are:

(1) Admission and days of stay denials. A physician consultant under contract with the Commission makes all decisions regarding medical necessity, cause of readmission, and appropriateness of setting.

(2) Technical denials. The Commission will issue a technical denial when a hospital fails to make the complete medical record available for review within specified time frames. These services may not be rebilled on an outpatient basis.

(A) For on-site reviews, if the complete medical record is not made available during the on-site review, the Commission will issue a preliminary technical denial at that time. The hospital is allowed sixty calendar days from the date of the exit conference to provide the complete medical record to the Commission. If the complete medical record is not received by the Commission within this time frame, the Commission will issue a final technical denial. If the Commission requests a copy of the medical record in writing, and the copy is not received within the specified time frame, the Commission will issue a preliminary technical denial by certified mail or fax machine. The hospital has sixty calendar days from the date of the notice to submit the complete medical record. If the complete medical record is not received by the Commission within this time frame, the Commission will issue a final technical denial.

(B) For mail-in reviews, the Commission will request copies of medical records in writing. If the Commission does not receive the complete medical record within the specified time frame, the Commission will issue a preliminary technical denial by certified mail or fax machine. The hospital has sixty calendar days from the date of the notice to submit the complete medical record. If the Commission does not receive the complete medical record within this specified time frame, the Commission will issue a final technical denial.

(3) Readmission denial. If it is determined that the services provided in the second or subsequent admissions were the direct result of a premature discharge or should have been provided in the first or previous admission, the Commission will deny the admission in question

(4) Day outlier denial. If it is determined that any days qualifying as outlier days during the admission were not medically necessary, the Commission will deny those days.

(5) Cost outlier denial. If it is determined that services delivered were not medically necessary, not ordered by a physician, not rendered or billed appropriately, or not substantiated in the medical record, the Commission will deny those services.

(b) When an admission denial or day of stay denial is issued, the Commission will direct the claims administrator to recoup payment. If a hospital claim is denied for lack of medical necessity or for being provided in an inappropriate setting, the Commission will consider for denial physician claims associated with the hospital admission or service when such claims can be identified and are deemed to be the result of inappropriate admission orders. The Commission will make an exception in the case of TMRP hospitals if the patient was originally placed in observation, and the hospital has been notified by the Commission that they may submit a revised outpatient claim solely for medically necessary outpatient services provided during the observation period. A physician's order for observation must be present in the physician's orders to document that the patient was originally placed in outpatient observation. The hospital must submit the revised outpatient claim and a copy of the Commission's notification letter to the claims administrator at the address indicated in the notification letter. The claims administrator must receive the outpatient claim and copy of the notification letter within one hundred twenty calendar days of the date of the notification letter. The claims administrator may consider payment for the medically necessary services provided during the twenty-four hour observation period. The hospital may provide observation services in any part of the hospital where a patient can be assessed, monitored and treated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2004.

TRD-200402121
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Effective date: April 14, 2004
Proposal publication date: January 30, 2004
For further information, please call: (512) 424-6576

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.80

The Commission adopts amendments to §3.80, relating to Commission Oil and Gas Forms, Applications, and Filing Requirements, with changes to the version published in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11455). The adopted amendments (as proposed) add language concerning electronic filings with the Commission, require rulemaking for adoption or revision of forms, and incorporate a list of current forms and their creation or last revision dates. Most of the changes from the proposal are in Table 1 of the rule and are discussed in subsequent paragraphs of this preamble.

Over the past few years, the procedure for updating Oil and Gas Division forms to meet Commission and external customer needs has been inconsistent. There is a need for a formal forms adoption process to balance changes to forms with the needs of staff and other stakeholders, computer programming and other information technologies capabilities and priorities, and legal issues concerning notice of form changes. Furthermore, the Commission's ongoing Oil & Gas Migration (OGM) Project is bringing about increased electronic filing capabilities and form changes, and thus makes more urgent the need for a more structured--even formal--process.

In the past, forms were revised with input from Commission staff and external customers through an informal process. Currently,

§3.80 states that "the Commission may revise any forms, at its discretion, without having a rulemaking proceeding *if the revisions do not result in any substantive changes to the forms*" (emphasis added); however, the rule does not define "substantive changes." In addition, stakeholders have advised the Commission that even seemingly minor changes to some forms may present major problems for them. Further, the Commission's Office of General Counsel (OGC) has indicated that it is preferable that any form the Commission requires be adopted or revised through formal rulemaking, and that rulemaking is legally required when information regarding the necessity and use of a form, and the penalties for failure to comply, are found only on the form itself.

The Commission evaluated several possible options for addressing these issues. The first option was to amend each rule pertaining to a form to include a specific reference to the appropriate form or forms, and to initiate a rulemaking to amend that rule when a form change is proposed. The form would show as the creation or revision date the effective date of the rule amendment. A second option was to amend §3.80 to include a list of all forms with the creation or last revision date and to amend §3.80 whenever a new or amended form is proposed. A third option was to provide for both informal and formal notice of, and opportunity to comment on, proposed forms changes through publication on the Commission's web site and in the section of the *Texas Register* entitled "In Addition."

Discussion of Oil and Gas Division forms and the need for a more structured process also was targeted in Commissioner (then Chairman) Michael Williams' Regulatory Vision effort by the "Process for Managing Forms Issue Group" (the Issue Group). This group, made up of Commission staff and industry representatives, consulting firms, and other stakeholders, developed a procedure for managing Oil and Gas Division forms, which would be a more formalized version of the Commission's past process. This more structured and formal procedure would direct all requests for form changes to the Oil and Gas Division Director; include establishment of a Form Work Group for each proposed form change; incorporate a period of informal review and comment; and include a formal rulemaking process to amend §3.80 to approve and adopt the new or amended form. The process for managing forms recommended by the Issue Group is as follows:

Process for Managing Oil and Gas Division Forms developed by the Issue Group

1. Forms changes will be initiated through: (1) a change in a rule or law; (2) a request from a Commissioner or agency staff; or (3) a request from an external customer.

2. Any change requested by staff or an external customer will be required to be accompanied by an explanation of and support for the proposed changes and a preliminary identification of impacts to the Commission.

3. The request will be submitted to the Oil and Gas Division Director (the Director), who either will refer it back to the originator with a request for more information or a rejection of the proposal or will authorize an ad hoc Form Work Team with instructions to proceed with the proposed change.

4. The Form Work Team, which will include appropriate Oil and Gas Division, Information Technologies Division, and Office of General Counsel staff, will perform a detailed analysis and draft the proposed new or amended form; circulate the proposal within the Commission; and complete a final draft form.

5. The Director will request approval from the Commission to seek comments from external stakeholders.

6. If the Commission approves the request, staff will provide notice of the proposed form change in the *Texas Register* in the "In Addition" section; on the Commission's Web site; and in a stripout, subscription, or stakeholder mailing list, as appropriate.

7. The Form Work Team will receive and analyze comments and recommendations from all stakeholders and will revise the draft form as necessary and appropriate.

8. The Form Work Team will draft the proposed amendment to §3.80 and any necessary amendments to other rules.

9. The Form Work Team will send the final draft new or amended form and the proposed rule amendments to the Director.

10. The Director will request Commission approval to publish for formal comment the proposed new or amended form and rule amendments.

11. If the Commission approves, staff will submit for publication the proposed rule amendments and a copy of the proposed new or amended form in the *Texas Register* for formal comment.

12. After the comment deadline, the Form Work Team will review and analyze the comments and make changes, if necessary and appropriate, to the form and/or rule(s).

13. The Director will request that the Commission adopt the rule amendments and new or amended form.

14. If the Commission adopts the rule and the form, staff will submit for publication the final rule(s) and form in the *Texas Register*.

The process proposed by the Issue Group includes both informal comment and formal comment associated with rulemaking; thus, it is not expeditious. The proposed forms management process may not be realistic over the next few years for forms changes that result from the Commission's OGM Project because of firm project deadlines for completing certain work and the need to finalize internal data information needs. In addition, the need for rapid progress in the OGM Project may mean that there will not be sufficient time to allow informal comment prior to formal comment through rulemaking.

The OGM Project is a major business process re-engineering and information technology initiative to move the Commission's outdated computer mainframe technologies to an open systems environment. The purpose of the project is to improve the Oil and Gas Division's internal business processes and provide the public with access to accurate information in a real-time environment. Additionally, this project provides the opportunity for reassessing data reporting requirements and for enhancing filing capabilities through an improved Electronic Data Interchange (EDI) process and on-line filing system. The Commission's OGM Project, into which Electronic Compliance and Approval Process (ECAP) has been incorporated, will eventually enable the Commission to meet its ultimate goal of implementing a totally paperless electronic workflow system for regulatory permitting and reporting through the use of Internet-based technologies, relational databases, document imaging, and workflow software. Therefore over the next few years, the Commission periodically will be revising forms or adopting new ones to reflect new screen configurations for all compliance permits and performance reports that are filed with the Commission.

The Commission's objective is to provide as much time as possible for stakeholder review and comment without delaying work

on the OGM Project. Therefore, during the OGM Project, the Commission will be asking stakeholders for up-front comments on Commission forms that the Commission may consider during the OGM Project, and will use the Commission's web site to notify stakeholders of upcoming proposed form changes and to obtain stakeholder input in a more expeditious manner than would be possible through an extended informal comment period. The amendments to §3.80 will establish the process to be used in the future and, at the very least, will assure that stakeholders will have an opportunity to submit formal comments on any form change proposed by the Commission. The Commission also adopts revised language relating to electronic filing in anticipation of changes and/or new electronic filing opportunities that will develop in association with the expansion of the ECAP and the OGM Project.

As amended, §3.80 establishes a formal forms adoption process to balance the needs of Commission staff and other stakeholders, computer programming and other information technologies capabilities and priorities, and legal issues concerning notice of form changes. The rule provides a process for the Commission to revise existing forms or adopt new ones to reflect new screen configurations for all compliance permits and performance reports that are filed with the Commission. The Commission also adopts revised language relating to electronic filing in anticipation of changes and/or new electronic filing opportunities that will develop in association with the expansion of the ECAP and the OGM Project. And, the adopted amendments make changes relating to the Commission's electronic filing capabilities and forms resulting from the Commission's ongoing (OGM) project.

The Commission amends §3.80(a) to delete language that allows the Commission to revise any form, at its discretion, without having a rulemaking proceeding. The amendment also adds Table 1, entitled Railroad Commission Oil and Gas Division Forms, which lists all Oil and Gas Division forms and the date that each was adopted or last revised. The Commission adds language to subsection (a) to require that a complete set of all Oil and Gas Division forms be posted on the Commission's web site. The Commission adds language in subsection (a) to allow an organization to file any required or discretionary filing using either the prescribed paper form or any electronic filing process in accordance with subsections (e) or (f) of §3.80, as applicable. The Commission also adds language in subsection (a) to allow the Commission to accept an earlier version of a prescribed form, provided that it contains all currently-required information. The Commission clarifies the requirement by specifying that electronic filings must comply with subsection (e)(3) of §3.80. The expected result is that stakeholders will have specific notice of when the Commission proposes to adopt or change a form and will have an opportunity to comment through the formal rulemaking process. These amendments also provide the regulated community with a list of all Oil and Gas Division forms and the creation or revision date of the current versions.

The Commission adopts amended §3.80(b), relating to definitions, to alphabetize the definitions, to add a definition for "form," and to replace the existing definition of "electronic filing" with a definition of "electronic filing process." The Commission defines "form" as a "printed or typed document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information." The Commission defines "electronic filing process" as "an electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions."

The Commission adopts amended §3.80(c) to change the five years to seven years, in accord with amendments to Texas Natural Resources Code, §91.114(a)(2), made by Senate Bill 1484 (Acts 2003, 78th Legislature, ch. 956, §1, effective June 20, 2003).

The Commission adds a new subsection (e), relating to authorization and standards for electronic filing. New §3.80(e)(1) allows an organization to file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

New §3.80(e)(2) provides that an organization filing or upon whose behalf is filed electronically any form shall be deemed to have knowledge of and to be responsible for the information filed on a form pursuant to the statutory requirements, restrictions, and standards found in and pertaining to Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging); Texas Natural Resources Code, Title 5 (geothermal resources); Texas Natural Resources Code, Title 11 (hazardous liquids storage); Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities); Texas Water Code, §26.131 (discharge permits); Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells); Texas Water Code, Chapter 29 (oil and gas waste haulers); Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and Texas Administrative Code, Title 16, Chapter 3 and Chapter 4.

New §3.80(e)(3) requires that all electronic forms that an organization transmits or that are transmitted on its behalf be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

New §3.80(e)(4) provides that the Commission may give electronic notice to an organization of an electronic filing, and may provide the ability for an organization to check whether the Commission has received electronic filings it made or that were made on its behalf. This new paragraph also provides that the Commission may notify an organization electronically of, and may provide the ability for an organization to confirm, the Commission's receipt of a form electronically submitted by or on behalf of that organization. Numerous operators contract with third-party consultants to handle required and discretionary filings with the Commission. Because an organization whose name appears on a form filed with the Commission is ultimately responsible for the filing and the information contained in the filing, the Commission plans to build into its new open computer system a method by which to notify an organization of an electronic filing or a way for an organization to electronically check to determine if the Commission has received any electronic filings for that organization.

New §3.80(e)(5) states that the Commission deems the signature of an organization's authorized representative to appear on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

New §3.80(e)(6) reiterates each organization's responsibility, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that are filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf. The wording in subsection (e)(6) has been amended

to correct a grammatical error; in that subsection, the word "is" in the phrase "is filed on its behalf" has been replaced with the word "are."

The Commission deletes existing §3.80(e), which referred to requirements for electronic filing under ECAP. The Commission also deletes the language in existing §3.80(f), which relates to requirements for electronic filing under the EDI program. The language in both these subsections is replaced with the broader language in new §3.80(e) to accommodate possible changes in the requirements for electronic filing associated with the Commission's new automated systems. There will be no immediate changes for any operator that has met the ECAP and EDI filing requirements. The Commission will provide advance notice of any future changes in electronic filing requirements.

The Commission re-designates current §3.80(g), relating to other electronic transmission, to subsection (f), to allow the Commission, at its discretion, to accept any other documents or data electronically transmitted.

In conjunction with the adopted amendments to §3.80, the Commission also adopts revised forms related to Class II Underground Injection Control (UIC) well applications (Forms W- 14, H-1, and H-1A), adopts a new production reporting form (Form PR), and adopts a revised Form W-1 (Application for Permit to Drill, Recomplete, or Re-Enter), as well as new Forms W-1D and W-1H (Supplemental Directional Well Information and Supplemental Horizontal Well Information, respectively).

The Commission revises Form W-14, Application to Dispose of Oil and Gas Waste by Injection into a Formation Not Productive of Oil and Gas; Form H-1, Application to Inject Fluid into a Reservoir Productive of Oil or Gas; and Form H-1A, Injection Well Data (an attachment to Form H-1). The Commission adds a few new data elements to these forms that the Commission requires to enable competent review of the application but for which there is currently no space on the forms. The Commission also deletes certain information currently requested on the forms, but not required by the rules. These form revisions have been in development for several years--the latest discussions occurred in conjunction with Commissioner Williams' Regulatory Vision efforts--with much opportunity for review and comment by stakeholders. Copies of the proposed revised forms were published for review and comment in the same issue of the *Texas Register* as the proposed amendments to §3.80. These new revised UIC forms are effective on May 1, 2004. The new revision date for these forms is indicated in Table 1 of §3.80.

As a part of the ongoing OGM Project, the Commission adopts revisions to Form W-1, Application to Drill, Deepen, Plug Back, or Reenter, as well as two new forms, Form W-1D, Supplemental Directional Well Information, and Form W-1H, Supplemental Horizontal Well Information. These new forms contain no new data requirements. The adopted revision to Form W-1 and the new Forms W-1H and W-1D generally reflect the current flow of the ECAP screens for electronically applying for a drilling permit and will facilitate the Commission's conversion of the filing, review and approval of a well's drilling permit application to a completely electronic process. The effective date of the revised Form W-1 and new Forms W-1D and W-1H is July 1, 2004. The new revision date for these forms is indicated in Table 1 of §3.80. The Commission will not accept the old forms after the new revision date because the format of the old forms is not compatible with the Commission's new electronic workflow procedures.

In addition, the Commission revises Form P-1, Producer's Monthly Report of Oil Wells, and Form P-2, Producer's Monthly Report of Gas Wells, to consolidate production reporting on one monthly form, new Form PR, Monthly Production Report. Commission staff originally presented the new Form PR to potentially affected external stakeholders, including representatives of industry, consultants, and forms software providers, at an October 10, 2003, meeting as a part of the Oil and Gas Migration project. The comments received by the Commission on the proposed revised production reporting form as a result of that meeting and the comments received by the Commission through this rulemaking were generally positive. The Commission has deleted some data elements, such as the gas lift volumes and disposition Code 9 for well separation extraction loss on gas wells, and has clarified other data elements, such as including a break-down for more specificity on disposition Code 7 (other dispositions).

The Commission contracted with a third party for help in the final design of the Form PR so that these forms can be scanned. The Commission also made some changes in response to comments. Therefore, the specific format design of the form changed very slightly, but the overall format and required information did not change substantially from the version published in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11455). The new Form PR revision becomes effective for production reports filed for January, 2005, production or any production report, including corrected reports and late reports, filed after close of business (5:00 p.m. Central Time) on February 11, 2005. The Commission will be "migrating" the data on its mainframe system to the new open system the weekend starting Friday, February 11, 2005, after 5:00 p.m. Central Time. The Commission expects the migration to be completed some time before 8:00 am on Monday, February 14, 2005. Because the Commission will be switching to the new data system, the Commission will not be able to accept old Forms P-1 and P-2 after close of business on Friday, February 11, 2005. Therefore, any production reported to the Commission after February 11, 2005, including corrected reports for production reports filed before that date, must be reported on the new Form PR. Any production reports NOT filed on the new Form PR that are received by the Commission after the close of business on February 11, 2005, will be returned to the operator.

The Commission received two comments, one from an association and one from an individual. The comment from the association was generally in support of the Commission's proposed amendments, but offered suggestions for changes, particularly on the forms.

The individual, a third party consultant for various oil and gas entities, commented not on the proposed rule amendments or form changes, but on the Commission's proposed deadline for accepting expedited applications for drilling permits. The Commission advised consultants at a meeting at the Commission headquarters in Austin on January 15, 2004, that the Commission was considering a deadline of 12:00 noon for receipt of any expedited drilling permit applications that are received by the Commission in paper form. The commenter noted several problems such a deadline could cause both consultants and Commission staff. The commenter stated that most overnight delivery services do not deliver until 10:30 a.m. If the consultant received an overnight delivery at 10:30 a.m. from a client asking that a drilling permit application be expedited, the consultant would not have enough time to prepare the Forms W-1 and attachments

and correct any problems. If the consultants were able to adequately prepare the paperwork, there would be a number of consultants arriving at the Commission between 11:30 a.m. and 12:00 noon in order to meet the deadline and these consultants would be standing in line waiting to get the drilling permit applications entered before the deadline.

The Commission is adopting a revised Form W-1 and new Forms W- 1D and W-1H in preparation for implementation of a new automated Drilling Permit System scheduled for release July 1, 2004. Through this system, the Commission will image scan and process electronically all drilling permit applications filed in paper format. All drilling permit information filed after the new drilling permit system is deployed will be available for public viewing through the ECAP query System on the Commission's website at www.rrc.state.tx.us. This will include images of permit applications, drilling permits, plats, and attachments. In preparation for this change, effective on March 1, 2004, the Commission's deadline for receipt of expedited Form W-1 Drilling Permit Applications requesting same-day processing changed from 3:00 p.m. to 12:00 noon to allow Commission staff to enter the information from the paper filing into the ECAP system to enable the request to be forwarded electronically to the necessary sections for processing to meet the "same day processing" deadline for expedited permits. The processing goal for Form W-1 applications that include the $150 expedite fee will be the same day they are received if the filing arrives at the Commission's Austin Office, Drilling Permit Section, before noon. Although Commission staff will continue to process all expedited Form W-1 applications as quickly as possible, those arriving at the Commission after 12:00 p.m. may not be processed the same day they are received. Commission staff will strive for a turn- around time of eight working hours for expedited applications received after the noon deadline.

The commenter also stated that consultants would not be able to use the ECAP process because the majority of their clients pay by check or pre-pay. The commenter also noted that his clients usually send only one check to cover the charge for multiple Forms W-1 and expressed concern with how he would pay if all of the applications were not entered by the noon deadline. The Commission is working with the designer of the Commission's new OGM system to accommodate this concern within the constraints of the Commission's resources and technical capabilities.

This commenter also wanted to know how the Commission plans to scan oversized plats, such as those that must be filed with a drilling permit application for the first well on the lease, for horizontal wells, and for wells for which an exception to §3.37 and/or §3.38 (relating to Statewide Spacing Rule and Well Densities, respectively) is required. The Commission has the capability to scan oversized documents, such as plats.

The Texas Oil and Gas Association (TxOGA) stated that it generally supports the Commission's proposed adoption of a formal process by which Oil and Gas Division forms used by the industry in permitting and submission of data can be adopted and revised and a list of forms that provides a clear notice of the latest version of any form currently being used by the Commission. TxOGA also expressed its full support for the Commission's OGM Project and the hope that the Commission's efforts will update and streamline many of its current processes and that this will result in reduction and/or elimination of redundant reporting and elimination of reporting of information that is no longer necessary. TxOGA further expressed appreciation for the opportunity to have participated in the Issue Group to produce a workable process by which forms can be proposed for change by either the Commission staff or industry representatives for mutual benefit. The Commission appreciates this comment.

TxOGA stated that, although it supports the adoption of the formal process in the proposed §3.80 changes, it is disappointed in the Commission's statements that the process may be unrealistic while the OGM Project is ongoing. TxOGA stressed that it is at this time specifically, as the Commission undertakes its most ambitious revision of forms and processes, that this process would be most beneficial. TxOGA acknowledged that time constraints may be unavoidable but reiterated that industry must have ample opportunity to review, process, and comment on the changes that will be proposed. TxOGA committed to providing comments as rapidly as possible.

The Commission agrees with this comment that stakeholder input is essential and reiterates that the Commission's objective is to provide as much time as possible for stakeholder review and comment without delaying work on the OGM Project. As it did in the preamble to the proposed amendments to §3.80, the Commission will be asking stakeholders for advance comments on forms that the Commission may consider during the OGM Project, and will use the Commission's web site to notify stakeholders of upcoming proposed form changes and to obtain stakeholder input in a more expeditious manner than would be possible through an extended comment period, whether formal or informal. Although the adopted amendments to §3.80 establish the *formal* process to be used in the future and, at the very least, assures that stakeholders will have an opportunity to submit formal comments on any form change proposed by the Commission, *whenever possible* the Commission plans to follow the procedure outlined in the preamble to the proposed amendments to §3.80 in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11455), including the creation of ad hoc form work teams and the opportunity for informal comment in proposed forms.

TxOGA also provided comments on proposed Forms H-1, H-1A, W- 14, W-1, W-1D and W-1H. In general, TxOGA agreed that revision of these forms is timely and should be done, but recommended that the Commission require on the forms only information required or needed for the Commission to approve or deny the filing to avoid unnecessary burdens on the applicant. The Commission agrees with this comment and reiterates that a large part of the Commission's OGM Project is a major re-engineering of the Commission's business processes. This effort is providing the Commission with an opportunity to completely reassess data reporting requirements and application requirements and eliminate those that are not necessary.

TxOGA urged the Commission to allow adequate time for implementation for the proposed form changes to allow vendors to perform any necessary work to upgrade forms programs for their customers. TxOGA estimated that six months from rollout of the final program requirements by the Commission would be required for operator implementation if the only changes are to the format in which the data will be presented on the form(s) and if no new data are required. TxOGA advised that if the Commission imposed new data submittal requirements, the time necessary for industry to comply could be from 12 to 18 months. TxOGA further recommended that all changes be made at one time, as it will cost each company many thousands of dollars to make programming changes each and every time the RRC changes the reporting requirements.

The Commission is keenly aware of the need to provide adequate notice to operators concerning effective dates of revised or new Commission forms and will provide as much time as possible within the constraints of the Natural Resources Code, the Administrative Procedure Act, and the OGM Project. The Commission understands that the time between adoption of a form and its implementation is especially critical for high volume forms that operators currently file electronically through EDI, such as the production reports. The Commission therefore adopts an effective date for Form PR for production reports filed for January, 2005, production or any production report filed after close of business (5:00 p.m. Central Time) on February 11, 2005. Because Form PR has been designed as a fillable PDF file, very little programming should be required because the form will not have to be recreated. The Commission will make the form available as a .PDF file on its website. As part of the change to the new combined Form PR for production reporting, the Commission will make available on its web page and by mail request, the electronic format required to file the new Form PR through the new EDI system. The Commission will include in this material instructions related to testing procedures for the new format. Testing of the new format and the approval process will begin in the fall of 2004. The instructions will also include contact information for questions and additional information.

The time between adoption of a form and the implementation date may not be as critical for forms that are filed much less frequently or that are not currently filed electronically, such as the UIC Forms W-14, H-1, and H-1A, for which the Commission adopts an effective date of May 1, 2004. As noted previously, the revised drilling permit applications generally reflect the flow of the ECAP screens for electronic application. The effective date for Forms W-1, W-1D, and W-1H are tied to the Commission's rollout of the new ECAP system scheduled for July 1, 2004. The Commission is also attempting to make all proposed changes to forms at one time, because any subsequent changes to the forms and the Commission's data systems would consume more of the Commission's scarce resources.

TxOGA also provided specific comments on the proposed new and revised forms proposed in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11455). TxOGA suggested that the Commission change Blocks 6 and 8 on Form H-1 to delete the word "project"; change Block 10, "Types of fluids," to "Add or Change Fluid Type" with a check box to be consistent with the rest of Block 10; change Block 12, "Composition," to "Lithology," based on the examples listed; rename Block 16, "Acreage," to "Acreage in lease or unit" to be consistent and to avoid confusion with the aerial extent of the reservoir or the lease/unit; and reword Block 27 to say "If water other than produced salt water will be injected, identify the source of each type of injection water by formation, or by aquifer and depths, or by name of surface water source." TxOGA's reason for this last suggested change is that the question presumes that "fluids other than produced salt water" consist of water from another source. This is confusing when dealing with CO2 as an injectant because CO2 is an "injection fluid(s) other than salt water" but it is not injection water whose source is a named formation, aquifer, etc. The Commission finds that these suggested changes clarify the form and has made the changes to Form H-1.

TxOGA also recommended that the Commission delete the requirement in Block 21 on Form H-1 for the injection pattern and spacing information because such information is not necessary for the Commission to make a decision to review an application. The Commission agrees that this information is not necessary, and has deleted Block 21 and renumbered subsequent blocks accordingly.

TxOGA requested that the Commission clarify Instruction 1 on the back of Form H-1, the request for an additional $150 fee for exceptions, to insure that it applies only to exceptions contemplated in §3.46 (relating to Fluid Injection into Productive Reservoirs) such as those described in §3.46(g)(3) and (j)(5)(B). The Commission agrees that this change would clarify the instructions, and has added the specific rule references. The Commission also made a similar change in the instructions for the Form W-14.

TxOGA recommended that the Commission revise Instruction 2 on Form H-1, which asks for a log of one of the proposed injection wells. TxOGA requested that the instruction be clarified to provide, consistent with current Commission practice, that if such a log is not available, the applicant may substitute a log from a nearby well instead. The Commission agrees with this comment and has made this change to the instructions on Form H-1.

TxOGA also recommended deleting the second sentence in Instruction 2 requiring operators to attach any other logging and testing information available for the well, because this request is an expansion of existing requirements and is unduly burdensome--operators can choose to submit additional data they wish to provide in support of an application, but should not be required to submit all logs and data available for the well. The Commission did not propose to change this wording, which is on the previous Form H-1 instructions; however, the Commission agrees that all logs and data for the well would not be necessary for staff to perform an adequate review of the application. The Commission has therefore modified the language of Instruction 2 to require only the logging and testing information available for the well that would support the application.

TxOGA requested that the Commission revise Instruction 3(a) on Form H-1, concerning the map of wells, to show only wells of public record that lie within a 1/4 mile radius of the *proposed injection wells*, not the "project area." The Commission agrees that this change clarifies the requirement and has made this change.

Also with respect to Instruction 3(a), TxOGA requested that the Commission change the language from "expansion of previous authority" to "amendment of previous authority" to avoid confusion, because an expansion of a previous authority is not a stated reason for filing an H-1. The Commission agrees with this comment and changed the language to read "amendment to add wells to a previous authority."

TxOGA requested that the Commission revise Instruction 7(a) and (b) of Form H-1 to require identification of certain parties and notice of the application to such parties to reflect the requirements in §3.46, (relating to Fluid Injection into Productive Reservoirs). The Commission agrees with this comment and has modified the language to more closely track the language in the rule.

TxOGA requested that the Commission modify Block 10 on Form H- 1A and stated that the "UIC number" should be assigned when the permit is issued, and it should be identified on any new or amended permit rather than being first revealed when pre-printed H-10's are sent out. Unfortunately, the Commission's current mainframe computer system is set up to assign the UIC number after the permit is issued. The system was established this way because the Commission issues injection and disposal well permits for wells that are not drilled, and/or have no drilling

permit number, API number, lease name or number. Commission staff will keep this request in mind when the Commission begins work to reassess and re-engineer its business processes associated with the UIC programs under the OGM Project.

TxOGA requested that the Commission increase the available space in Block 14(a) of the Form H-1A to allow for adequate information. The Commission agrees that this would be helpful and has increased the allowable space within the restrictions of the form.

In commenting on Block 19 on Form H-1A, TxOGA stated that if a liner is not run all the way to surface, there is no place on the proposed form to record this information even though it would seem to be important to a proper technical review of the well's construction. TxOGA suggested that the language be modified to ask "If a liner was installed in the well, what is the top of liner?" The Commission agrees that this would be important information. Because of limited space on the form, however, the Commission has taken an alternative action. The space in Block 19 has been slightly expanded, and a comment has been added to the instructions for Form H-1A to include both the top and bottom setting depth of any liner that is not run to the surface.

TxOGA also requested that the Commission add two more "free form" lines in Block 24 on Form H-1A to allow for inclusion of several squeeze jobs or that the applicant be requested to attach additional information as necessary. TxOGA also requested that the Commission delete the required information concerning the "top of cement" on a squeeze job because this information is almost never known. The Commission partially agrees and has added free-form lines. However, the Commission does not agree that the top of cement is never known. The top of cement can be calculated with reasonable certainty or tagged and the applicant should know the top of cement.

TxOGA recommended that the Commission accept the Form H-1A construction data as an update to previously filed Form W-2 completion reports, and not require the applicant to revise the Form W-2 to make it agree with the Form H-1A filing. At this time, the Commission's programs are not set up to automatically update the information on the last Form W-2. In addition, §3.46(h), concerning well record, currently requires that the operator submit Form W-2 within 30 days after completion or conversion of an injection well and the Commission did not propose to change this requirement. The Commission will keep this comment in mind when designing the new data management systems for UIC and any conforming amendments to Commission rules.

TxOGA stated that the word "current" appears twice in instruction Item 2 on Form H-1A. TxOGA also requested that the Commission reword as "Complete the field name and number (Items 3 and 4) as designated by current Commission records." TxOGA had a similar comment for Item 3 on Form H-1A. The Commission agrees and has made these corrections.

TxOGA requested that the Commission revise Form W-14 to allow more room in Blocks 12, 32, and 40 for describing information. The Commission agrees and has allowed more space in these blocks, within the limits of the form.

TxOGA also recommended that the Commission modify Form W-14 to delete the requirement in Blocks 37 and 39 for average daily injection volumes and pressures in addition to maximum daily injection volumes and pressures. TxOGA states that the information is unnecessary because the permit is for a maximum condition not an average condition. The Commission disagrees with this comment, and has not changed the form. This information is important. Although any disposal well permit issued by the Commission contains a limit based on the estimated maximum conditions of pressure and volume, any permit issued by the Commission is also based on information contained in the permit application, including the average conditions under which the well will be operated. Although not generally noted in the permit, the average daily injection volume and pressure are necessary to evaluate potential impacts from operation of the well under average or normal conditions, as well as maximum conditions.

TxOGA requested that the Commission delete Block 24 on Form W- 1, which would require the unitization order number, because it is currently not required in the manual Form W-1 or when using ECAP and is not necessary for the Commission to regulate this activity. The Commission declines to make this change. By providing the unitization number, the operator avoids filing a Form P-12 unnecessarily. If a lease has been pooled and unitized through the hearing process, a Form P-12 filing is not required. The current ECAP system has this functionality and, for the current paper Form W-1 process, Commission staff gathers this information manually and writes it on the form. Uniformity is gained by adding this functionality. Although the Commission declines to make the recommended change, it has added an explanation to the instructions on Form W-1 to clarify why the Commission is requesting the information.

TxOGA commented that the information required in Blocks 33, 34, and 35 on Form W-1 is redundant when an applicant is also filing the Form W-1H or Form W-1D, and thus should be required on Form W-1 only when a Form W-1H or Form W-1D is not being filed. The Commission originally provided Blocks 33, 34, and 35 for directional or horizontal wells with a single bottomhole location and anticipated that Form W-1H and Form W-1D would be used as supplemental forms only for directional or horizontal wells with multiple bottomhole locations. The Commission now agrees that including this language on Form W-1 is confusing and has deleted this section. Now Form W-1 may be filed alone for a vertical well. Form W-1D must be filed with a Form W-1 for a directional well or an unintentionally deviated well for which an amended (Form W-1) application is being filed. Form W-1H must be filed with a Form W-1 for a horizontal well. The Commission has added clarifying language under Block 34 on Form W-1, and has changed the name of Forms W-1D and W-1H to indicate that they are supplemental to Form W-1. The Commission further included additional clarifying language in the instructions to Form W-1 concerning when these supplemental forms must be filed.

For Form W-1D, TxOGA recommended that the Commission delete the word "Associated" in Blocks 5, 13, and 21 because the term is confusing due to very different meaning in allowable context. The Commission agrees with this comment and has deleted the word "Associated;" however, the Commission has added language after "Field" to clarify that the field should be the one shown on Form W-1 for which the supplemental Form W-1D or W-1H is being filed to link the information in these items with the information shown in Block 27 on Form W-1.

For Form W-1H, TxOGA recommended that the Commission delete the word "Associated" in Blocks 5, 14, and 23 on Form W-1H, because the term is confusing due to very different meaning in allowable context. The Commission agrees with this comment and has deleted the word "Associated;" however, the Commission also has added language after "Field" to clarify that the

field should be the one shown on Form W-1 for which the supplemental Form W-1D or W-1H is being filed to link the information in these items with the information shown in Block 27 on Form W-1.

For new Form PR, TxOGA recommended that the Commission change the wording to use consistent nomenclature for gas. The Commission agrees with this comment and has modified the form to use the term "casinghead gas/gas well gas" consistently to avoid confusion.

TxOGA also commented that the drilling permit numbers should be used exclusively in place of the well or lease identification numbers for the initial months of production. Once the permit is validated upon filing of the completion paperwork, it is no longer used whereas the API number remains an active number with the well bore. The production reporting systems of many operators must be able to accept the same permit number for wells that have multiple completions. The system must be able to accept a Form PR showing the same well under different Commission designated fields with the same drilling permit number. An API number is associated with the well bore, which may be completed in multiple reservoirs and thus is not unique to the productive reservoir. API numbers should be used only when a drilling permit number is not available, such as when a well is reclassified from oil to gas. The Commission made no change in response to this comment.

TxOGA recommended that the Commission further explain the column "OGP" so operators will know exactly what they need to fill this in correctly. The Commission agrees with this comment and has modified the form.

TxOGA expressed support for the elimination in new §3.80(e) of the Master Electronic Filing Agreement (MEFA) for ECAP and the Master Electronic Filing Certification for EDI, and the granting of that authority by rule rather than agreement. However, TxOGA is unclear how Security Administrator Designation(s) will be made. TxOGA takes the position that a company should be able to designate multiple security administrators for each P-5 company and that security administrator designations should be allowed for multiple P-5s. TxOGA supports the concept of having the security for reporting and permitting rest with the operator and not the Commission, and states that it should be the responsibility of the designated security administrator(s) to delegate authority within a company to submit reports and make permit applications. The Commission agrees with these comments. The distributed security design ensures that the control will rest within the operator's organization through each operator's designated security administrator(s). Security administrator designations will continue to be made by the operator on the Security Administrator Designation (SAD) that is filed with the Commission. An operator may designate multiple security administrators. After receiving an operator's SAD, the Commission will issue the designated security administrator(s) a User ID that will allow the security administrator(s) to access and update the Commission's electronic filing security system. The security administrator(s) will then be responsible for assigning additional User IDs to individuals within the company and maintaining that security.

TxOGA expressed support for the proposed e-filing of all other documents or data that may help support any filing made with the Commission. TxOGA further proposes that electronic notices to operators, gatherers, etc., which pertain to any electronic filing be transmitted to the individual which submitted the application or electronic form; electronic reply and confirmation to the filer is fundamental to assuring timely and accurate information submittal. The Commission appreciates TxOGA's support and agrees that electronic reply and confirmation of receipt of filing should be elements of the Commission's electronic filing systems within the restraints of its technical capabilities and resources.

The Commission specifically solicited comments on Form T-1, Monthly Transportation and Storage Report, Form P-4, Producer's Transportation Authority and Certificate of Compliance, and Form P-5, Organization Report, in the December 26, 2003, proposal, even though these forms were not part of the proposal itself. The Commission will be focusing on these forms and the associated business processes over the next few years' work on the OGM Project. TxOGA also provided comments on Forms T-1, P-4, and P- 5. The Commission appreciates this information and will consider it as the Commission begins work on these programs.

The Commission adopts the amendments to §3.80 pursuant to Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells and persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; and §91.142, which requires the Commission to obtain specified information from a person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of performing operations which are within the jurisdiction of the Commission.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 91.142.

Issued in Austin, Texas, on March 23, 2004.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.
Figure: 16 TAC §3.80(a)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Electronic filing process--An electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions.

(3) Form--A printed or typed paper document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information.

(4) Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

(5) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility. The Commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a Commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the Commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the Commission relating to the violation or to the alleged violation have not been collected.

(e) Authorization and standards for electronic filing.

(1) An organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

(2) The Commission deems an organization that files electronically or on whose behalf is filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in and pertaining to:

(A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging);

(B) Texas Natural Resources Code, Title 5 (geothermal resources);

(C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

(D) Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities);

(E) Texas Water Code, §26.131 (discharge permits);

(F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells);

(G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

(H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and

(I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and Chapter 4 (Environmental Protection).

(3) All forms that an organization submits or that are submitted on behalf of an organization shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(4) The Commission may provide notice electronically to an organization of, and may provide an organization the ability to confirm electronically, the Commission's receipt of a form submitted electronically by or on behalf of that organization.

(5) The Commission deems that the signature of an organization's authorized representative appears on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

(6) The Commission holds each organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that are filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

(f) Other electronic transmissions. The Commission may at its discretion accept other documents or data electronically transmitted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 23, 2004.

TRD-200402082
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 12, 2004
Proposal publication date: December 26, 2003
For further information, please call: (512) 475-1295

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CHAPTER 20. ADMINISTRATION
SUBCHAPTER G. EMPLOYEE TRAINING AND EDUCATION PROGRAM

16 TAC §§20.601 - 20.605

The Railroad Commission of Texas (Commission) adopts new §§20.601-20.605, relating to Employee Training and Education Program, In-Service Instruction, Staff Development, Tuition Reimbursement Program, and Required Training, without changes to the proposal published in the February 6, 2004, issue of the *Texas Register* (29 TexReg 1120). The new rules will be in 16 TAC Chapter 20, new subchapter G, to be entitled Employee Training and Education Program. The Commission adopts the new rules to establish its employee training program in accordance with the requirements of Texas Government Code, Chapter 656, Subchapters C and D.

New §20.601 states the scope, purpose, and limitations and conditions of the Commission's employee training and education program. The program consists of in-service instruction, staff development training, the tuition reimbursement program, and required training. Employees are eligible to participate in the Commission's training and education program to increase their job-related knowledge and skills, without regard to race, color, religion, sex, age, national origin, disability, or veteran status.

The Commission's employee training and education program must relate to an employee's job duties following the training. The Commission's objectives for the employee training program include developing and retaining a well-trained and competent staff; acquainting employees with new technical, legal, or security developments; motivating employees and stimulating their involvement and participation in Commission work; assisting employees in achieving their maximum potential and usefulness to the Commission; and improving the efficiency and economy of state government.

The Commission's employee training and education program is contingent upon funding authorized by the legislature or through available funds in the Commission's regular budget. An employee's participation in training or education for which the Commission would expend funds is not a right, nor is it an obligation of the Commission to any of its employees. There is no guarantee that budgeted amounts will be available at all times in a fiscal year. The funds available to any one employee may not exceed $1,200 per fiscal year. An employee's participation in training under the program does not in any way affect an employee's at-will status; is not considered a guarantee or indication that approval will be granted for subsequent requests to participate; and does not constitute a guarantee or indication of either continued employment in a current position or future employment in a prospective position.

New §20.602 describes the type of training offered as in- service instruction. In-service instruction includes new employee orientation; training on policies prohibiting discrimination; and other instruction including but not limited to technical courses that provide technical knowledge and skill requirements for effective job performance in a specific classification series, such as hazardous materials training; computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications; information and data security training that offer best practices for ensuring the security and integrity of the Commission's information resources; and safety training, such as disaster preparedness, basic first aid, highway and traffic safety, and office safety and health that are offered to all employees. The Commission may require employees to attend in- service instruction.

New §20.603 describes staff development training offered to employees. The Commission may pay for an employee to attend a workshop, seminar, conference, institute, or continuing education course that is related to a current or prospective duty assignment. An employee's request to attend a staff development program must be approved in advance by the employee's supervisor and division director. An employee's participation in a continuing education course or program that is required for an employee to maintain a professional license is considered a priority in allocating a division's training budget if the professional license is a requirement of the employee's job. Attendance at an approved staff development program is considered part of the employee's normal work duties, and the employee is not required to use accrued leave to attend. The Commission may reimburse travel expenses incurred by employees attending a staff development program according to current Commission policy regarding employee travel.

New §20.604 sets for the guidelines for the tuition reimbursement program. In this section, "training" means instruction, teaching, or other education received by a Commission employee that is not normally received by other Commission employees and that is designed to enhance the ability of the employee to perform his or her job. The term includes a course of study at an institution of higher education or a private or independent institution of higher education as defined by Texas Education Code, §61.003. The tuition reimbursement program does not include training required either by state or federal law or that is determined necessary by the Commission and offered to all employees of the Commission performing similar jobs. In-service instruction and staff development are not part of the tuition reimbursement program.

A Commission employee may participate in the tuition reimbursement program without regard to the employee's race, color, religion, sex, age, national origin, disability, or veteran status, provided that the employee meets the other qualifications for the program, as set forth in proposed new §20.604(b). Even if an employee meets all the qualifications of the tuition reimbursement program, the employee has neither a right to reimbursement nor a guarantee that budgeted amounts will be available at all times in a fiscal year. The funds available to any one employee for tuition reimbursement may not exceed $1,200 per fiscal year.

The Commission will not reimburse employees for any tuition or registration costs, mandatory fees, and expenses for books and other written materials that are covered by scholarships, grants, or other awarded funds; for costs other than tuition or registration costs, mandatory fees, and expenses for books and other written materials; for auditing a course; or for any federal income taxes incurred because of the Commission's reimbursement of costs pursuant to the employee training and education program.

New §20.604(b) sets forth the minimum qualifications for participation in the tuition reimbursement program. As of the date the employee makes the request to participate, the employee must have been employed full time by the Commission for at least 12 months; must have received an overall performance rating of at least "meets requirements" on the employee's current Employee

Performance Evaluation (EPE); and must have received no disciplinary action in the prior six months. "Disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

New §20.604(c) requires that an employee requesting approval to participate in the tuition reimbursement program must meet the minimum requirements and provide to the supervisor the following information, in writing, prior to enrolling or registering for a course, class, or training program the employee's name, job title, and overall rating on the employee's current EPE; the name of the training course or educational institution; the name and number, if any, of the class, course, or program; the dates, hours, and duration of the training, and whether any or all of the training falls during the employee's regularly scheduled work hours; the amount of the tuition or registration fee; the amount of any mandatory fees that are assessed or charged in addition to tuition or registration fees; the approximate cost of books and other written materials; the deadline for enrolling in or registering for the training; and an explanation of the way in which the requested training relates to the employee's job duties after the training, whether related to a current or a prospective position.

The employee's supervisor must review the employee's request for tuition reimbursement to determine if the employee meets the requirements of subsection (b) of this section; the requested training is related to the employee's current or prospective employment duties; the requested training meets one or more of the objectives set forth in proposed new §20.601(b); and the requested dates and times for attending the training will not adversely affect the employee's workload or performance.

If the supervisor determines that all elements have been satisfied, then the supervisor must meet with the employee to discuss the obligations that the employee will be expected to meet and those that the employee may be required to assume should the request for tuition reimbursement be approved. The employee will be expected to continue working at Commission for at least one month for each month of the training course for which the Commission has paid. If an employee terminates before the end of this month-for-month period, the employee shall repay the Commission the full amount of the reimbursement to the employee. If an employee ceases to be employed by the Commission because of a reduction in force prior to the end of the month-for-month period, the employee's obligation to repay the Commission is terminated.

In addition, the employee's supervisor or division director may require the employee to make regular reports regarding the employee's progress in the training; discuss information obtained at the training with other employees; share materials obtained from training with other employees, to the extent such sharing does not violate copyright law; assume additional job duties for which the training prepared the employee; and conduct training for other employees concerning the information or skills taught at the training.

The supervisor must also discuss with the employee the specific attendance times that the training would require. If the employee would be required to attend the training during normal work hours, the supervisor and employee must devise a flex-time work schedule for the employee. If a flex-time work schedule is not feasible, the supervisor and employee must discuss the use of the employee's accrued vacation and compensatory leave time to accommodate attendance at the training.

In addition to the information provided in the employee's request for tuition reimbursement and the discussion with the employee, the supervisor may also consider the current or prospective job duties of the employee; the employee's current and previous two EPEs; the specific skill needs of the section or division; whether there is a lack of employees or applicants with the skills the requested training would provide the employee; whether allowing the employee to attend training during work hours, if that has been requested, would adversely affect workload or performance; the funding available; and any other factor that is relevant to the employee's request for tuition reimbursement.

The supervisor must consider the employee's application, the information gathered in discussion with the employee, and other relevant factors, and must issue a decision in writing. If the supervisor concludes that the request should be denied, the supervisor must include a statement of the reason or reasons for the denial. An employee may appeal a supervisor's denial to the division director. If the supervisor decides that the employee's request for tuition reimbursement should be approved, the supervisor then forwards the request to the division director with a written recommendation for approval.

The division director will review the employee's request and the supervisor's recommendation, and issue a decision in writing. If the division director concludes that the request should be denied, the division director must include a statement of the reason or reasons for the denial. An employee may appeal a division director's denial to the deputy executive director. If the division director decides that the employee's request for tuition reimbursement should be approved, the division director then forwards the employee's request and the supervisor's recommendation to the deputy executive director with a written recommendation for approval.

The deputy executive director is authorized to approve or deny the employee's request for tuition reimbursement, and must issue a decision in writing. A denial must include a statement of the reason or reasons for the denial. An employee may appeal the deputy executive director's denial of a request for tuition reimbursement to the executive director, whose decision is final. If the deputy executive director approves the request, the original documents will be retained in the office of the deputy executive director, and copies of the documents provided to the employee.

New §20.604(e) provides that an employee who has received final approval of his or her request for tuition reimbursement must meet all admission requirements of the educational institution offering the course for which the request for tuition reimbursement was approved; complete all paperwork and pay all costs for the training, including tuition or registration costs, mandatory fees, expenses for books or other written materials, etc.; and retain all original dated receipts indicating the amounts the employee paid for each type of expenditure.

New §20.604(f) requires an employee to complete the training within the time period for which tuition reimbursement was approved. The employee must immediately notify his or her supervisor if the employee ceases to be enrolled in a class for which tuition reimbursement was approved. The Commission will not reimburse an employee for training expenses for incomplete or dropped training.

New §20.604(g) prohibits an employee attending training approved for tuition reimbursement from using Commission equipment or resources such as personal computers, printers, copiers, fax machines, e-mail, internet connections, etc. During

the employee's work hours, the employee may not do research, writing, projects, homework, or other activities related to the training.

New §20.604(h) requires an employee to use flex time, if possible, to accommodate attendance at training. If flex time is not used, then the employee must use accrued vacation and compensatory leave time for attendance at training.

New §20.604(i) sets forth the qualifications and procedure for tuition reimbursement. Failure to comply with the reimbursement requirements will result in denial of reimbursement. To qualify for tuition reimbursement, an employee must complete the training with a grade of "C" or better for training graded on an "A" through "F" scale; a 75 percent or better score for training graded on a numerical scale; or a passing grade for training graded on a "pass/fail" scale. The employee must complete any course in which a grade of "I" (Incomplete) has been awarded within three months, unless there are valid reasons, such as serious illness, to the contrary. A course dropped after registration does not qualify for reimbursement.

To receive tuition reimbursement, within 15 working days of receiving the final grade or grades, the employee must submit to the Personnel Division a reimbursement claim. A reimbursement claim consists of copies of the employee's request; all recommendation memoranda; the deputy executive director's or executive director's final approval memorandum; the itemized paid receipts for tuition, mandatory fees, and books and other written materials; and the official grade report, which the Commission will keep confidential.

The Personnel Division will verify the employee's grade and the costs for tuition or registration fees, other mandatory fees, and expenses for books and other written materials. Upon approval of the reimbursement claim, the Personnel Division will forward the claim to the Finance Division for reimbursement to the employee.

New §20.605 pertains to required training. Pursuant to Texas Government Code, §656.045, the Commission may require an employee to attend, as all or part of the employee's duties, a training or education program if the training or education is related to the employee's duties or prospective duties. The Commission may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, the expense of training materials, and other necessary expenses of an employee who is required to participant in a training or education program.

An employee who is engaged in training pursuant to this section and who does not perform his or her regular duties for three or more months as a result of the training may use Commission equipment or resources such as personal computers, printers, copiers, fax machines, e-mail, internet connections, etc.; and may be required by the supervisor or division director to use a Commission vehicle to attend the training. The employee is required to sign an agreement of understanding and assume mandatory obligations, pursuant to Texas Government Code, §§656.103 and 656.104. If the employee receives training paid for by the Commission, and during the training period the employee does not perform the employee's regular duties for three or more months as a result of the training, the employee must agree in writing that the employee will either work for the agency following the training for at least one month for each month of the training period or pay the Commission for all the costs associated with the training that were paid during the training period, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensatory leave.

If the employee does no work for the Commission following its reimbursement to the employee for training costs, works for some but not all of the required amount of time, or fails to pay the Commission amounts reimbursed for training costs, and the Commission does not release the employee from the obligation to either provide the services or make the payments, the employee is liable to the Commission for all costs associated with the training that the Commission paid, including any amounts of the employee's salary that were paid during the training period and that were not accounted for as paid vacation or compensatory leave, and for the Commission's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees.

The Commission may waive the statutory requirements and release an employee from the obligation to meet those requirements only if the Commission finds that such action is in the best interest of the agency or is warranted because of an extreme personal hardship suffered by the employee and enters an order to that effect in open meeting.

The Commission received no comments on the proposed rules.

The Commission adopts the new sections under Texas Government Code, Subchapter C, the State Employee Training Act, and Subchapter D, Restrictions on Certain Training, and specifically under Texas Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency and to the obligations assumed by the administrators and employees on receiving the training and education. The rules are also adopted under Texas Government Code, §656.102, which provides that before a state agency spends any money on training for a state employee, the state agency must adopt a policy governing the training of employees (in addition to the rules required by §656.048) that requires training to relate to an employee's duties following the training.

Texas Government Code, Chapter 656, Subchapters C and D are affected by the new sections.

Statutory authority: Texas Government Code, Subchapters C and D, and §§656.048 and 656.102.

Cross-reference to statute: Texas Government Code, Chapter 656, Subchapters C and D.

Issued in Austin, Texas, on March 23, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 23, 2004.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 133. HOSPITAL LICENSING

(Editor's Note: The Texas Department of Health adopted amendments to 25 TAC Chapter 133 in the March 26, 2004, issue of the Texas Register (29 TexReg 3195 - 3205). In the print version of the Texas Register, pages 3196 and 3202 were inadvertently replaced with pages 3296 and 3302 and omitted from the issue. We are republishing the rule adoption notice for 25 TAC Chapter 133 in its entirety.)

The Texas Department of Health (department) adopts amendments to §§133.2, 133.22, 133.23, 133.26, 133.45, 133.101, 133.121, 133.141 - 133.143 and 133.161 - 133.167, and new §133.48, concerning the regulation of hospitals. Sections 133.2, 133.22, 133.23, 133.48 and 133.101 are adopted with changes to the proposed text as published in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10381). Sections 133.26, 133.45, 133.121, 133.141 - 133.143 and 133.161 - 133.167 are adopted without changes and, therefore, the sections will not be republished.

The amendments and new section in Subchapters A - C, F, and G are required as a result of revisions and additions to sections of the Health and Safety Code. House Bill (HB) 2292, 78th legislature, 2003, revised Health and Safety Code, §§12.0111 and 12.0112, and requires two-year licenses effective January 1, 2005; HB 341, 78th legislature, 2003, added Health and Safety Code, §§161.451 and 161.452, and requires parenting and postpartum counseling information to be provided to patients; and Senate Bill 162, 78th legislature, 2003, which amended Health and Safety Code, §241.053, and added probation to the list of enforcement actions that can be taken against a facility; HB 15, 78th legislature, 2003, added Health and Safety Code, Chapter 171, and requires information and consent forms to be provided to abortion patients; HB 1614, 78th legislature, 2003, amended Health and Safety Code, Chapter 241, by adding Subchapter H, which establishes a patient safety program. The amendments to Subchapters H and I are necessary to make the rules compatible with the requirements of the federal Medicare Conditions of Participation, and will eliminate burdensome requirements concerning operable windows.

Specifically, the amendment to §133.2 includes additional definitions for action plan, adverse event, medical error, reportable event, and root cause analysis. Amendments to §§133.22 and 133.23 implement the process for converting to two-year licensing cycles beginning January 1, 2005. The amendment to §133.26 changes the description of fee assessment to accommodate the change to the two-year license cycle. The amendment to §133.45 requires a hospital which provides obstetrical services on a routine or emergency basis to adopt a policy concerning postpartum counseling and parental assistance, and requires a hospital that performs abortions to adopt a policy concerning informed consent for abortion. New §133.48 includes requirements related to development and implementation of a patient safety program, and establishes annual reporting requirements related to specific events occurring at the facility, and submission of best practice reports. The amendment to §133.101 clarifies limitations on the department's access related to a root analysis and action plan. The amendment to §133.121 reflects the addition of probation to the list of enforcement actions that can be taken against a facility. Amendments to §§133.141 - 133.143 and 133.161 - 133.167 change all references to compliance with National Fire Protection Association, Code for Safety to Life from Fire in Buildings and Structures, (NFPA 101), from the 1997 edition to the 2000 edition; update the editions of other codes referenced in NFPA 101 to those required by the 2000 edition; change chapter and section numbers referenced in the 1997 edition to the new chapter and section numbers in the 2000 edition; and eliminate the requirement for operable windows in patient sleeping rooms, a burdensome requirement which has resulted in numerous requests to the department for waiver of the requirement. Operable windows are not required in the 2000 edition of NFPA 101.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning the rules in general, one commenter requested that the department add a definition for "legal custody", and recommended content for that definition. The commenter stated that questions had arisen regarding who has "legal custody" of a newborn, and whether proof of legal custody would be required through a court document before the newborn could be released. The commenter believed this would create an unworkable standard for the parent or legal guardian, and felt that including a definition in the rules would clarify what was required.

Response: The department disagrees. The legislature used the term "legal custody" in the legislation, and chose not to include any clarifying definition of that term. The term is legally defined as "lawfully in possession; guardianship by authority of a legal process." The department is not requiring that the parent or legal guardian obtain official court documentation in every instance before a newborn could be released to someone other than the parent or guardian. The language in the statute and the rule clearly states that the hospital is expected to exercise ordinary care in releasing a newborn to anyone other than the parent or legal guardian. The hospital must determine what documentation they will require and under what circumstances a newborn would be released to anyone other than the parent or legal guardian. No change was made as a result of this comment.

Comment: Concerning §133.2(4), one commenter was opposed to scope of the definition of "adverse event" in the proposed rule, and recommended that the department adopt the Institute of Medicine's definition of that term.

Response: The department agrees. Since the Institute of Medicine is a nationally recognized authority on health care quality and patient safety, it is appropriate to use their definition of the term "adverse event". The rule has been changed to include the definition found in the Institute of Medicine's 2004 publication entitled Patient Safety: Achieving a New Standard of Care.

Comment: Concerning §133.2(36), one commenter requested that the department consider changing the definition of "medical error" to be consistent with the definition used by the Institute of Medicine.

Response: The department agrees. Since the Institute of Medicine is a nationally recognized authority on health care quality and patient safety, it is appropriate to use their definition of the term "medical error". The rule has been changed to include the definition found in the Institute of Medicine's 2004 publication entitled Patient Safety: Achieving a New Standard of Care.

Comment: Concerning §133.48(a)(1)(B)(ii)-(iv), one commenter asked that the department clarify that these reporting requirements applied only to the hospitals internal reporting systems, and not to any external reporting requirements.

Response: Although §133.48(a)(1)(B)(ii)-(iv) as proposed did not place any external reporting requirements on the hospital, the department agreed to include the revised language in §133.48(a)(1)(B)(ii)-(iv) to provide the additional clarification requested by the commenter.

Comment: Concerning §133.48(a)(1)(B)(vi), one commenter stated that the requirement that hospitals have in place a support system for staff members who were involved in medical errors would be unduly burdensome for small and rural facilities.

Response: The rationale for including this requirement in the proposed rule was based on the recommendations of nationally recognized patient safety organizations who emphasize that a patient safety program can only be successful if it is presented in a non-punitive manner and with an organizational commitment to providing support to those who voluntary report medical errors. However, the department agrees that making this support system mandatory could be burdensome on some facilities, therefore, the requirement has been deleted in §133.48(a)(1)(B)(vi) and the subsequent clauses renumbered. Hospitals are encouraged to voluntarily provide a support system for staff who are involved in a medical error.

Comment: Concerning §133.48(a)(1)(B)(xi), two commenters requested that the proposed rule requiring that hospitals include a process for educating patients regarding their shared responsibility for patient safety be deleted, as the language was vague and it would be unduly burdensome to educate patients.

Response: The rationale for including this requirement in the proposed rule was based on the Institute of Medicine's recommendation that health care organizations implement polices designed to assist patients and their families in understanding their roles in assuring the safety of patients while they are in the hospital. However, the department understands that some hospitals may find compliance with this requirement excessively burdensome, therefore the requirement has been deleted from the final rule. Hospitals are strongly encouraged to voluntarily include patient safety issues in their patient education activities. Clause (xi) was deleted from subsection §133.48(a)(1)(B).

Comment: Concerning §133.48(a)(2), one commenter stated that, although training of certain personnel could be inferred to be a reasonable component of a hospital's patient safety program, the requirement to provide patient safety education and training to all clinical and administrative staff was excessive. The commenter believed it was not necessary to extend this requirement to administrative staff, and recommended that rule be revised to reflect that the training was required only for those staff directly involved with the patient safety program.

Response: The department agrees, and has revised §133.48(a)(2) to reflect this change.

Comment: Concerning §133.48(a)(3), one commenter stated that the proposed rule requiring that the hospital designate an individual to serve as the Patient Safety Program Coordinator could create an unworkable standard in many institutions. The commenter recommended that the rule be revised to allow more than one individual, or an interdisciplinary group, to be designated as responsible for the management of patient safety program.

Response: The department agrees, and has revised §133.48(a)(3) to reflect this change as well as grammatical changes to the subparagraphs of the paragraph.

Comment: Concerning §133.48(b), a commenter stated that the proposed rule which would require a hospital to report a best practice and safety measure for each type of reported event was not required by the legislation. It was the commenter's opinion that the legislation only required that hospitals submit one best practices report for a reported event, even if multiple types of reportable events were identified in the reporting year.

Response: Although the department believes that the legislation, as written, can be interpreted to mean that a best practice report should be submitted for each type of reported occurrence, the author of the legislation has clarified that the intent was only to require submission of one best practice report for each facility, not for each type of reported occurrence. The department believes this interpretation can also be considered consistent with the legislation, therefore the rule has been revised to reflect this change to paragraphs (1)(A) and (2)(A) of the subsection.

Comment: Concerning §133.48(b)(2)(A), a commenter requested that the rule be clarified to indicate the if a facility had no adverse events or occurrences to report, then no best practice reports would be required.

Response: The department disagrees. The rule clearly states that the required submission of a best practice and safety measure report is related to a reported occurrence. No change was made to the rule as a result of this comment.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the sections.

Change: Concerning §133.2(19), the definition of director was changed to reflect the correct title of the division, Health Facility Licensing and Compliance Division.

Change: Concerning §133.2(21), the definition of division was changed to reflect the correct name of the division, Health Facility Licensing and Compliance Division.

Change: Concerning §133.22(e)(2)(B), a comma was added after the date to be consistent with the punctuation following dates throughout the chapter.

Change: Concerning §133.23(b)(1)(E), the change from "and;" to "; and" in the subparagraph corrects the formatting in proposed.

Change: Concerning §133.48(a)(1)(B)(ix), the word "causeanalysis" was corrected to "cause analysis."

Change: Concerning §133.101(d)(1), the word "section" was deleted before "§133.48" to be consistent.

The commenters were the Texas Hospital Association and the Texas Scottish Rite Hospital for Children. The commenters were neither for nor against the rules in their entirety; however, they expressed concerns and made recommendations for change as discussed in the summary of comments.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §133.2

The amendment is adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in

the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

§133.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling or eliminating identified problem areas.

(3) Advance directive--Written instructions recognized under state law relating to the provision of health care when individuals are unable to communicate their wishes regarding medical treatment. The advance directive may be a written document authorizing an agent or surrogate to make decisions on an individual's behalf (a durable power of attorney for health care), a written or oral statement (a living will), or some other form of instruction recognized under state law specifically addressing the provisions of health care.

(4) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(5) Applicant--The person legally responsible for the operation of the hospital, whether by lease or ownership, who seeks a hospital license from the department.

(6) Attorney general--The attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(7) Biological indicator--Commercially-available microorganisms (e.g., United States Food and Drug Administration (FDA) approved strips or vials of Bacillus species endospores) which can be used to verify the performance of waste treatment equipment and processes (or sterilization equipment and processes).

(8) Board--The Texas Board of Health.

(9) Chemical dependency services--A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(10) Comprehensive medical rehabilitation--The provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share responsibility to achieve team treatment goals for the person.

(11) Comprehensive medical rehabilitation hospital--A general hospital that specializes in providing comprehensive medical rehabilitation services, including surgery and related ancillary services.

(12) Comprehensive medical rehabilitation unit--An identifiable part of a hospital which provides comprehensive medical rehabilitation services to patients admitted to the unit.

(13) Contaminated linen--Linen which has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(A) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV) containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(14) Cooperative agreement--An agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

(15) Dentist--A person licensed to practice dentistry by the State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

(16) Department--The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(17) Designated provider--A provider of health care services, selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, CHAMPUS, a business corporation, an employee organization, a county, a public hospital, a hospital district, or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

(18) Dietitian--A person who is currently licensed by the Texas State Board of Examiners of Dietitians as a licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with the American Dietetic Association.

(19) Director--The hospital licensing director, Health Facility Licensing and Compliance Division, Texas Department of Health.

(20) Disciplinary action--Denial, suspension, or revocation of a license, issuance of an emergency order or imposition of an administrative penalty.

(21) Division--The Health Facility Licensing and Compliance Division, Texas Department of Health.

(22) Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in one or all of the following:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) with respect to a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(23) Fast-track projects--A construction project in which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints such as mandated deadlines.

(24) General hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(25) Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(26) Governing body--The governing authority of a hospital which is responsible for a hospital's organization, management, control, and operation, including appointment of the medical staff; includes the owner or partners for hospitals owned or operated by an individual or partners.

(27) Hospital--A general hospital or a special hospital.

(28) Hospital administration--Administrative body of a hospital headed by an individual who has the authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing body.

(29) Illegal conduct--A conduct prohibited by federal or state law.

(30) Inpatient--An individual admitted for an intended length of stay of 24 hours or greater.

(31) Inpatient services--Services provided to an individual admitted to a hospital for an intended length of stay of 24 hours or greater.

(32) Legally reproduced form--A medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium.

(33) Licensed vocational nurse--A person who is currently licensed under the Vocational Nurse Act by the Board of Vocational Nurse Examiners for the State of Texas as a licensed vocational nurse (LVN).

(34) Licensee--The person or governmental unit named in the application for issuance of a hospital license.

(35) Mandated provider--A person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents.

(36) Medical error--The failure of a planned action to be completed as intended, the use of a wrong plan to achieve an aim, or the failure of an unplanned action that should have been completed, that results in an adverse event.

(37) Medical staff--A physician or group of physicians or a podiatrist or group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for, or in connection with, the observation, care, diagnosis, or treatment of an individual who is or may be suffering from mental or physical disease or disorder, or a physical deformity or injury.

(38) Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(39) Mental retardation--Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(40) Mobile unit--Any pre-manufactured structure, trailer, or self-propelled unit equipped with a chassis on wheels and intended to provide shared medical services to the community on a temporary basis. Some of these units are equipped with expanding walls, and designed to be moved on a daily basis.

(41) Outpatient--An individual who presents for diagnostic or treatment services for an intended length of stay of less than 24 hours.

(42) Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the hospital.

(43) Owner--One of the following persons or governmental unit which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(44) Patient--An individual who presents for diagnosis or treatment.

(45) Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(46) Person--An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(47) Physician--A physician licensed by the Texas State Board of Medical Examiners.

(48) Podiatrist--A podiatrist licensed by the Texas State Board of Podiatry Examiners.

(49) Practitioner--A health care professional licensed in the State of Texas, other than a physician, podiatrist, or dentist.

(50) Premises--A premises may be any of the following:

(A) a single building where inpatients receive hospital services; or

(B) multiple buildings where inpatients receive hospital services, provided that the following criteria are met:

(i) all inpatient buildings and inpatient services are subject to the control and direction of the governing body of the hospital;

(ii) all inpatient buildings are within a 30-mile radius of the main address of the licensee;

(iii) there is integration of the organized medical staff of the hospital;

(iv) there is a single chief executive officer who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(v) there is a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital; and

(vi) each building that is geographically separate from other buildings contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination thereof, in the building for hospital inpatients.

(51) Presurvey conference--A conference held with department staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation prior to the on-site licensure inspection.

(52) Psychiatric disorder--A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful syndrome (distress) or impairment in one or more important areas of behavioral, psychological, or biological function and is more than a disturbance in the relationship between the individual and society.

(53) Registered nurse--A person who is currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse (RN).

(54) Relocatable unit--Any structure, not on wheels, built to be relocated at any time and provide medical services. These structures vary in size.

(55) Reportable event--A medical error or adverse event or occurrence which the hospital is required to report to the department, as set out in §133.48 of this title (relating to Patient Safety Program).

(56) Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event. It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organizational processes, and identifies potential improvements in processes or systems.

(57) Special hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(58) Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(59) Transfer--The movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who has been declared dead, or leaves the facility without the permission of any such person.

(60) Transportable unit--Any pre-manufactured structure or trailer, equipped with a chassis on wheels, intended to provide shared medical services to the community on an extended temporary basis. These units are designed to be moved periodically, depending on need.

(61) Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(62) Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control (CDC) of the United States Public Health Service. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in hospitals.

(63) Violation--Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the commissioner of health or the commissioner's designee, adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER B. HOSPITAL LICENSE

25 TAC §§133.22, 133.23, 133.26

The amendments are adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

§133.22. Application and Issuance of Initial License.

(a) Application submittal. The applicant shall submit the following documents to the Texas Department of Health (department) no earlier than 60 calendar days prior to the projected opening date of the hospital:

(1) an accurate and complete application form;

(2) a copy of the hospital's patient transfer policy which is developed in accordance with §133.44 of this title (relating to Hospital Patient Transfer Policy) and is signed by both the chairman and secretary of the governing body attesting to the date the policy was adopted by the governing body and the effective date of the policy;

(3) a copy of the hospital's memorandum of transfer form which contains at a minimum the information described in §133.44(b)(11)(B) of this title;

(4) if the application is for a special hospital license, a copy of a written agreement the special hospital has entered into with a general hospital which provides for the prompt transfer to and the admission by the general hospital of any patient when special services are needed but are unavailable at the special hospital. This agreement is required and is separate from any voluntary patient transfer agreements the hospital may enter into in accordance with §133.61 of this title (relating to Hospital Patient Transfer Agreements);

(5) copies of any patient transfer agreements entered into between the hospital and another hospital in accordance with §133.61 of this title;

(6) for existing facilities, a copy of a hospital fire safety survey indicating approval by the local fire authority in whose jurisdiction the hospital is based that is dated no earlier than one year prior to the hospital opening date. For new construction, addition, and renovation projects, written approval by the local building department and local fire authority shall be submitted during the final construction inspection by the department;

(7) the appropriate license fee as required in §133.26 of this title (relating to Fees); and

(8) if the applicant is a sole proprietor, partnership with individuals as a partner, or a corporation in which an individual has an ownership interest of at least 25% of the business entity, the names and social security numbers of the individuals.

(b) Verification of franchise tax status. Upon receipt of the application documents, the department shall verify the franchise tax status of an applicant who is a corporation prior to the issuance of a license. In accordance with Article 2.45, Part Two, Texas Business Corporation Act, the department will not issue a hospital license to an applicant who is a corporation if the corporation is delinquent in franchise tax owed to the state under the Tax Code, Texas Codes Annotated, Chapter 171.

(c) Additional documentation for new hospitals or conversions from nonhospital buildings. In addition to the document submittal requirements in subsection (a) of this section, and verification of the franchise tax information in subsection (b) of this section, the following shall be completed prior to the issuance of a hospital license to newly constructed hospitals or hospitals from conversions of nonhospital buildings.

(1) Preliminary and final architectural plans and specifications shall be reviewed and approved by the department in accordance with §133.167 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(2) For new construction, necessary preliminary inspections and final construction inspections shall be conducted by the department in accordance with §133.167(e)(4) of this title to determine that the hospital was constructed or remodeled in accordance with this chapter.

(3) When an applicant intends to reopen and relicense a building formerly licensed as a hospital, an on-site inspection shall be conducted by the department in accordance with §133.167(e)(4) of this title to determine compliance with applicable construction and fire safety requirements.

(4) All plan review and construction inspection fees shall be paid to the department.

(5) A certificate of occupancy approved by the local fire authority, and issued by the city building inspector, if applicable, shall be obtained and a copy submitted to the department.

(6) A complete, accurate, and notarized Affidavit for Final Construction Approval form shall be submitted to the department.

(7) The project architect shall submit a statement to the department that the hospital's project plans and specifications have been submitted to the Texas Department of Licensing and Regulation.

(d) Presurvey conference. The applicant or the applicant's representative shall attend a presurvey conference at the office designated by the department. The designated survey office may waive the presurvey conference requirement.

(e) Issuance of license. When it is determined that the hospital has complied with subsections (a)-(d) of this section, the department shall issue the license to the applicant.

(1) Effective date. The license shall be effective on the date the hospital is determined to be in compliance with subsections (a)-(d) of this section. The effective date shall not be prior to the date of the final construction inspection conducted by the department.

(2) Expiration date.

(A) For initial licenses issued prior to January 1, 2005.

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.

(B) For initial licenses issued January 1, 2005, or after.

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

(f) Withdrawal of application. If an applicant decides not to continue the application process for a license or renewal of a license, the application may be withdrawn. If a license has been issued, the applicant shall return the license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw.

(g) Denial of a license. Denial of a license shall be governed by §133.121 of this title (relating to Enforcement Action).

(h) Inspection. During the licensing period, the department shall conduct an inspection of the hospital to ascertain compliance with the provisions of the Act and this chapter.

(1) If a hospital has applied to participate in the federal Medicare program, the inspection may be conducted in conjunction with the inspection to determine compliance with 42 Code of Federal Regulations, Part 482 (relating to Medicare Conditions of Participation for Hospitals).

(2) A hospital shall have admitted and be providing services to at least one inpatient in the hospital at the time of the inspection.

§133.23. Application and Issuance of Renewal License.

(a) Renewal notice. The Texas Department of Health (department) shall send a renewal notice to a hospital at least 60 calendar days before the expiration date of a license.

(1) If the hospital has not received the renewal notice from the department within 45 calendar days prior to the expiration date, it is the duty of the hospital to notify the department and request a renewal application for a license.

(2) If the hospital fails to submit the application and fee within 15 calendar days prior to the expiration date of the license, the department shall send by certified mail to the hospital a letter advising that unless the license is renewed, the hospital must cease operations upon the expiration of the hospital's license.

(b) Renewal license. The department shall issue a renewal license to a hospital which meets the minimum requirements for a license.

(1) The hospital shall submit the following to the department prior to the expiration date of the license:

(A) a complete and accurate application form;

(B) a copy of a hospital fire safety survey indicating approval by the local fire authority in whose jurisdiction the hospital is based that is dated no earlier than one year prior to the application date;

(C) the renewal license fee;

(D) if the applicant is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association, a copy of documentation from the accrediting body showing the current accreditation status of the hospital;

(E) an annual events report in accordance with §133.48(b)(1) of this title (relating to Patient Safety Program); and

(F) a best practices report in accordance with §133.48(b)(2) of this title.

(2) Upon receipt of the renewal documents, the department shall verify the franchise tax status of an applicant who is a corporation prior to the issuance of a license. In accordance with Article 2.45, Part Two, Texas Business Corporation Act, the department will not issue a hospital license to an applicant who is a corporation if the corporation is delinquent in franchise tax owed to the State under the Tax Code, Texas Codes Annotated, Chapter 171.

(3) The department may conduct an inspection prior to issuing a renewal license in accordance with §133.101 of this title (relating to Inspection and Investigation Procedures).

(4) Renewal licenses issued prior to January 1, 2005, will be valid for 12 months.

(5) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 months or 24 months, to be determined by the department prior to the time of license renewal.

(6) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.

(c) Notice to cease operation and return license. If a hospital fails to submit the application, documents, and fee by the expiration date of the hospital's license, the department shall notify the hospital by certified mail that it must cease operation and immediately return the license by certified mail to the department. If the hospital wishes to provide services after the expiration date of the license, it shall apply for a license under §133.22 of this title (relating to Application and Issuance of Initial License).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.45, §133.48

The amendment and new section are adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

§133.48. Patient Safety Program.

(a) General.

(1) The hospital must develop, implement and maintain an effective, ongoing, organization-wide, data driven Patient Safety Program (PSP).

(A) The governing body must ensure that the PSP reflects the complexity of the hospital's organization and services, including those services furnished under contract or arrangement, and focuses on the prevention and reduction of medical errors and adverse events.

(B) The PSP must be in writing, approved by the governing body and made available for review by the department. It must include the following components:

(i) the definition of medical errors, adverse events and reportable events;

(ii) the process for internal reporting of medical errors, adverse events and reportable events;

(iii) a list of events and occurrences which staff are required to report internally;

(iv) time frames for internal reporting of medical errors, adverse events and reportable events;

(v) consequences for failing to report events in accordance with hospital policy;

(vi) mechanisms for preservation and collection of event data;

(vii) the process for conducting root cause analysis;

(viii) the process for communicating action plans; and

(ix) the process for feedback to staff regarding the root cause analysis and action plan.

(2) The hospital must provide patient safety education and training to staff who have responsibilities related to the implementation, development, supervision or evaluation of the PSP. Training must include all PSP components as set out in paragraph (1)(B) of this subsection.

(3) The hospital must designate one or more individuals, or an interdisciplinary group, qualified by training or experience to be responsible for the management of the patient safety program. These responsibilities shall include:

(A) coordinating all patient safety activities;

(B) facilitating assessment and appropriate response to reported events;

(C) monitoring root cause analysis and resulting action plans; and

(D) serving as liaison among hospital departments and committees to ensure hospital-wide integration of the PSP.

(4) Within 45 days of becoming aware of a reportable event specified under subsection (b)(1)(A) of this section, the hospital must:

(A) complete a root cause analysis to examine the cause and effect of the event through an impartial process; and

(B) develop an action plan identifying the strategies that the hospital intends to employ to reduce the risk of similar events occurring in the future. The action plan must:

(i) designate responsibility for implementation and oversight;

(ii) specify time frames for implementation; and

(iii) include a strategy for measuring the effectiveness of the actions taken.

(C) The hospital must make the root cause analysis and action plan available for on-site review by department representatives.

(b) Reporting requirements.

(1) Annual events report.

(A) On the renewal of the hospital's license, or annually based on the hospital's original licensing date, the hospital shall submit to the department a report that lists the number of occurrences at the hospital, including any outpatient facility owned or operated by the hospital, of each of the following events occurring during the preceding year:

(i) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient;

(ii) a perinatal death unrelated to a congenital condition in an infant with a birth weight greater that 2,500 grams;

(iii) the suicide of a patient in a setting in which the patient received care 24 hours a day;

(iv) the abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;

(v) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility;

(vi) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(vii) a surgical procedure on the wrong patient or on the wrong body part of a patient;

(viii) a foreign object accidentally left in a patient during a procedure; and

(ix) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(B) The hospital is not required to include any information other than the total number of occurrences of each of the events listed under subparagraph (A) of this paragraph.

(2) Best practices report.

(A) On the renewal of the hospital's license, or annually based on the hospital's original licensing date, the hospital shall submit to the department at least one report of the best practices and safety measures related to a reported event.

(B) The best practice report may be submitted on a form to be prescribed by the department, or the hospital may submit a copy of a report submitted to a patient safety organization.

(C) Hospitals may voluntarily report additional best practices and safety measures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
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SUBCHAPTER F. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §133.101

The amendment is adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

§133.101. Inspection and Investigation Procedures.

(a) Routine inspections. The Texas Department of Health (department) may conduct an inspection of each hospital prior to the issuance or renewal of a hospital license.

(1) A hospital is not subject to routine inspections subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC), §§1395 et seq; or

(B) accreditation by the Joint Commission on Accreditation of Healthcare Organizations or by the American Osteopathic Association.

(2) The department may conduct an inspection of a hospital exempt from an annual licensing inspection under paragraph (1) of this subsection before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and the department determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.

(b) Complaint investigations.

(1) Complaint investigations are conducted if the department finds that reasonable cause exists to believe that the hospital has violated provisions of the Act, this chapter, special license conditions, or orders of the commissioner of health (commissioner).

(2) Complaints received by the department concerning abuse and neglect, or illegal, unprofessional, or unethical conduct will be conducted in accordance with §133.47(c) of this title (relating to Abuse and Neglect Issues).

(3) Complaint investigations are coordinated with the federal Health Care Financing Administration and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act, (42 USC, §§1395 et seq), so as to avoid duplicate investigations.

(4) Complaint investigations are generally unannounced.

(c) Reinspection.

(1) Reinspections may be conducted by the department if a hospital applies for the reissuance of its license after the suspension or revocation of the hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of the Act, this chapter, a special license condition, or an order of the commissioner.

(2) A reinspection may be conducted to ascertain compliance with either health or construction requirements or both.

(d) General.

(1) The department may make any inspection, survey, or investigation that it considers necessary. A representative of the department may enter the premises of a hospital at any reasonable time to make an inspection or an investigation to ensure compliance with or prevent a violation of the Act, the rules adopted under the Act, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. Ensuring compliance includes permitting photocopying of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the statute or rules adopted under the statute, except that the department may not photocopy, reproduce, remove or dictate from any part of the root cause analysis or action plan required under §133.48 of this title (relating to Patient Safety Program).

(2) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce the Act, this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under federal or state law.

(3) By applying for or holding a hospital license, the hospital consents to entry and inspection or investigation of the hospital by the department or a representative of the department in accordance with the Act and this chapter.

(e) Inspection and investigation protocol.

(1) The department surveyor(s) shall hold a conference with the hospital administrator or designee before beginning the on-site inspection or investigation to explain the nature, scope, and estimated time schedule of the inspection or investigation.

(2) Department surveyor(s) may conduct interviews with any person with knowledge of the facts.

(3) The department surveyor(s) shall inform the hospital administrator or designee of the preliminary findings of the inspection or investigation and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings.

(4) Following an inspection or investigation of a hospital by the department, the department surveyor(s) shall hold an exit conference with the hospital administrator or designee and other invited staff and provide the following to the hospital administrator or designee:

(A) the specific nature of the inspection or investigation;

(B) any alleged violations of a specific statute or rule;

(C) identity of any records that were duplicated;

(D) the specific nature of any finding regarding an alleged violation or deficiency;

(E) if the deficiency is alleged, the severity of the deficiency; and

(F) if there are no deficiencies found, a statement indicating this fact.

(5) If deficiencies are cited, the department surveyor(s) shall obtain either at the time of the exit conference or within 10 days of the hospital's receipt of the statement of deficiencies a plan of correction which is provided by the hospital and indicates the date(s) by which correction(s) will be made and any other written comments, if any, by the hospital administrator or designee concerning

the inspection or investigation. Additional facts, written comments, or other information provided by the hospital in response to the findings shall be made a part of the record of the inspection or investigation for all purposes.

(6) The department surveyor(s) shall obtain the signature of the hospital administrator or designee acknowledging the receipt of the statement of deficiencies and plan of correction form.

(7) The department surveyor(s) shall inform the administrator or designee of the hospital's right to an informal administrative review when there is disagreement with the surveyor's findings and recommendations or when additional information bearing on the findings is available.

(8) If deficiencies are cited and the plan of correction is not acceptable, the department shall notify the hospital in writing and request that the plan of correction be resubmitted within 10 calendar days of the hospital's receipt of the department's written notice. Upon resubmission of an acceptable plan of correction, written notice shall be sent by the department to the hospital acknowledging same.

(9) Responses to the department may be submitted by facsimile.

(10) The hospital shall come into compliance by the completion date provided on the statement of deficiencies and plan of correction form.

(11) The department shall verify the correction of deficiencies either by mail or by an on-site inspection or investigation.

(12) Acceptance of a plan of correction does not preclude the department from taking enforcement action under §133.121 of this title (relating to Enforcement Action) or under §133.122 of this title (relating to Administrative Penalty).

(f) Release of information by the department.

(1) Upon written request, the department shall provide information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the inspection or investigation, and the date on which the department representative acted on the matter.

(2) Upon written request, the department shall release inspection documents in accordance with state and federal law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. ENFORCEMENT

25 TAC §133.121

The amendment is adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. FIRE PREVENTION AND SAFETY REQUIREMENTS

25 TAC §§133.141 - 133.143

The amendments are adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

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SUBCHAPTER I. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

25 TAC §§133.161 - 133.167

The amendments are adopted under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the

performance of every duty imposed by law on the board, the department, and commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 330. MUNICIPAL SOLID WASTE

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.4

The Texas Commission on Environmental Quality (commission) adopts an amendment to §330.4, concerning Permit Required, *with changes* to the proposed text as published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9196).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The rulemaking is in response to a petition received on December 16, 2002 from the City of Houston requesting a permit exemption for transfer stations that also operate source-separation recycling programs. The petitioner requested that the rule be changed to state that a permit is not required for any municipal solid waste Type V transfer station that is owned by a local government that operates a source-separation recycling program or, as provided by the existing rule, includes a material recovery operation that meets all of the requirements established by this subsection. The requested revisions to the rule language were to delete the word "new" in the phrase "a permit is not required for any new municipal solid waste Type V transfer station that," and to insert the following phrase describing an additional exemption: "either is owned by a local government that operates a source-separated recycling program or . . .."

On February 5, 2003, the commission voted to initiate rulemaking and instructed the executive director to examine the issues in the petition, including whether to establish appropriate criteria for the exemption and whether to broaden the permit exemption beyond local governments.

Previous rules allowed municipal solid waste transfer facilities which recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling to obtain a registration in lieu of a permit. The adopted rule will allow transfer facilities to deduct incoming waste that has already been reduced by 10% or more through recycling in calculating their qualification to obtain a registration in lieu of a permit. The adopted rule will also allow a transfer facility that is owned and/or operated by a person or persons who also operate(s) one or more source-separation recycling programs in the county where the transfer station is located to obtain a registration in lieu of a permit, if those source-separation recycling programs manage an amount of recyclable materials equal to 10% or more of the incoming waste stream to all transfer stations to which credit is being applied.

For example, under the previous rule, if a transfer facility received 50,000 tons annually of incoming waste from one source, then that transfer facility could only qualify for the permit exemption if the transfer facility could demonstrate that it recycled 10% or more (5,000 tons or more) at the transfer facility prior to transferring the waste to a landfill. Under the adopted rule, if a transfer facility receives 50,000 tons annually of incoming waste from two sources, 25,000 tons annually from each source, but one source, Source A, has a source-separation recycling program that recycles 10% or more (2,500 tons or more), then in order to qualify for the permit exemption, that transfer facility must only demonstrate that it recycles 10% or more (2,500 tons or more) of the amount of incoming waste from Source B prior to transferring the waste to a landfill. Alternatively, the same transfer facility would qualify for the permit exemption if the transfer facility owner and/or operator also owned and/or operated, in the same county, a source-separation recycling program or programs that recycled a total of at least 5,000 tons of material.

The commission determined the language contained in the petition, "either is owned by a local government that operates a source-separated recycling program or . . ." was not appropriate. The rule has been broadened, beyond the requested application to local governments, to allow any transfer facility meeting the criteria to qualify for this permit exemption. However, the rule applies the permit exemption only for a specific transfer facility location, not as a blanket exemption for owners or operators.

A registration does not have a contested case hearing requirement; however, a public meeting must be held for each application as required by Texas Health and Safety Code, §361.111, and the existing rules in 30 TAC §330.65(d)(3)(C). By allowing a registration in lieu of a permit, it could be more cost effective for transfer stations to operate, which could have the effect of increased recycling of municipal solid waste.

The adopted rule adds a new ongoing recordkeeping requirement in addition to the current annual reporting requirement.

SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to be consistent with Texas Register requirements.

Section 330.4(e), Permit Required, adds a cross-reference to subsection (q), which is now applicable under this rulemaking. Subsection (e) also deletes the word "shall" and replaces it with the word "must" to conform with the Texas Legislative Council Drafting Manual. "Shall" imposes a duty upon a person named in the sentence. "Must" imposes a precedent condition on a thing named in the sentence.

Section 330.4(q) deletes the word "new" to allow both new and existing transfer stations that meet all the requirements of this subsection to register their operations in lieu of obtaining a permit. This should result in increased recycling efforts of transfer stations by extending their recycling requirements beyond their

application for registration, thereby, creating an ongoing performance-based requirement for permit exemption. This subsection deletes the language "that includes a material recovery operation" to allow a more flexible exemption for transfer stations. Subsection (q) is also amended for readability by combining two redundant sentences; deleting text to be consistent with Texas Register formatting requirements; deleting the word "must" and replacing it with the word "shall;" and adding a cross-reference that had been inadvertently omitted.

Subsection (q)(1) is amended to correct a catch line that is rendered inaccurate as a result of this rulemaking and is restructured from proposal by adding subparagraphs (A) and (B) and by restructuring the proposed paragraph (1)(A) and (B) as paragraph (2) for better readability. The subsequent paragraphs in subsection (q) are renumbered accordingly.

Restructured subsection (q)(1)(A) deletes the word "total" and adds the sentence, "Incoming waste that has already been reduced by at least 10% through a source-separation recycling program is not subject to this requirement and may be excluded from this calculation." This relieves transfer facilities from the burden of having to recover an additional 10% from source-reduced waste streams and provides an incentive for transfer facility operators to establish effective source-reduction programs. This amendment is consistent with Texas Health and Safety Code, §361.111(a)(4), which exempts from municipal solid waste permit requirements "a materials recovery facility that recycles for reuse more than 10% of its incoming *nonsegregated* waste stream if the remaining non-recyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility." Paragraph (1)(A) also deletes the word "must" and replaces it with the word "shall"; removes an obsolete effective date; and corrects the tense of the subparagraph to conform to the new lead-in sentence.

Restructured subsection (q)(1)(B) adds language in response to comments to allow a transfer facility to qualify for the exemption if the transfer station is owned by a person who also operates one or more source-separation recycling programs in the county where the transfer station is located, if those recycling programs manage an amount of recyclable materials equal to 10% or more of the incoming waste stream to all transfer stations to which credit is being applied.

Restructured subsection (q)(2) outlines the documentation requirements needed by a transfer station to apply for and maintain the permit exemption. This complements the deletion of the word "new" in subsection (q) by creating an ongoing performance-based standard for this permit exemption.

The existing subsection (q)(2) is renumbered from proposal as subsection (q)(3).

The existing subsection (q)(3) is renumbered from proposal as (q)(4). Renumbered paragraph (4) deletes the word "shall" and replaces it with the word "must" and updates a cross-reference.

The existing subsection (q)(4) is renumbered from proposal as subsection (q)(5). Renumbered paragraph (5) deletes the word "such" for readability.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the rule is to promote recycling and materials recovery at Type V transfer facilities by exercising commission discretion under Texas Health and Safety Code, §361.111, that would allow greater flexibility regarding the recycling activities that would qualify a transfer facility for an exemption from permit requirements. Therefore, it is not anticipated that the rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that this rule does not meet the definition of major environmental rule.

Furthermore, even if the rule did meet the definition of a major environmental rule, the rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the rule does not meet any of these requirements. First, there are no applicable federal standards that this rule would address. Second, the rule does not exceed an express requirement of state law because there is no expressly applicable state law. Third, there is no delegation agreement that would be exceeded by the rule. Fourth, the commission adopts this rule to allow greater flexibility regarding the recycling activities that would qualify a Type V transfer facility for an exemption from permit requirements under Texas Health and Safety Code, §361.111. This rule is also adopted under the authority of Texas Health and Safety Code, §361.011 and §361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act, and §361.022, which sets public policy in the management of municipal solid waste to include reuse or recycling of waste. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rule and performed an assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rule is to promote recycling and materials recovery at Type V transfer facilities by exercising commission discretion under Texas Health and Safety Code, §361.111 to allow greater flexibility regarding the recycling activities that would qualify facilities for an exemption from permit requirements. The rule would substantially advance this stated purpose by deleting the requirement that only

new facilities may qualify for the exemption and allowing a facility to use the reduction in the incoming waste stream from a source-separation recycling program to count toward the exemption.

Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect real property. This rule exercises commission discretion by broadening the exemption from permit requirements for Type V transfer facilities.

There are no burdens imposed on private real property, and the benefits to society are increased recycling and extended life to existing landfills. In addition, because the rule increases the number of facilities eligible for an exemption from permit requirements, the rule does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this rule will not constitute a taking under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rule and found that it is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission determined the rule concerns permit exemptions, which are administrative and procedural in nature; does not impact any CMP goals and policies; will have no substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the rule will not violate (exceed) any standards identified in the applicable CMP goals and policies. Therefore, this rule is consistent with CMP goals and policies.

The commission solicited comments on the consistency of the proposed rulemaking with the CMP during the public comment period. No comments were received on the consistency of the proposed rulemaking with the CMP.

PUBLIC COMMENT

The proposed rules were published for comment in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9196). A public hearing on this proposal was held in Austin on November 17, 2003, and the comment period closed on November 24, 2003. No person presented oral comments at the hearing. Comments were received from: City of Houston (COH); Dallas County Corporate Recycling Council (DCCRC); Harris County (HC); Texas Disposal Systems (TDS); and two individuals.

RESPONSE TO COMMENTS

Comment

TDS commented that it supported the rulemaking as proposed. HC also supported the commission's efforts to promote recycling.

Response

The commission appreciates these comments in support of the rulemaking.

Comment

DCCRC urged caution in the loosening of any standards or permitting requirements, specifically the removal of the contested case hearing opportunity by allowing registration in lieu of a permit. DCCRC also contended that 10% recovery was not high enough, and expressed opposition to rule changes that would further reduce this standard. HC also commented that new transfer stations should be subject to a contested case hearing.

Response

This rulemaking was initiated in response to a petition and not in accordance with new legislation. Therefore, the rule must remain within the legislative authority of the existing statute, Texas Health and Safety Code, §361.111, which allows a facility that recycles for reuse more than 10% of its incoming nonsegregated waste stream to obtain a registration in lieu of a permit. The criteria for a permit exemption in the rule remain within the parameters of the existing statute, but neither increase nor reduce the 10% waste reduction standard. As recommended, the commission has not reduced the 10% waste reduction standard.

The exemption from permitting requirements for a facility that meets the 10% standard, transfers the remaining waste to a permitted landfill not more than 50 miles away, complies with design and operation requirements established by the commission for registered facilities, and holds a public meeting on the siting of the facility is mandated by the statute. The commission has a statutory duty or obligation to grant these exemptions as an incentive for recycling, and included in that statutory exemption is removal of the opportunity to request a contested case hearing. There is still opportunity for public input on registrations in the form of comments taken at a public meeting that must be considered by the executive director before taking action on the application. No changes have been made to the rule in response to these comments.

Comment

An individual expressed concern about verification of recycling rates to demonstrate compliance and enforcement with the 10% requirement.

Response

The commission agrees that there will be an increase in recordkeeping by exempted facilities. For those facilities owned by the operator of a source-separation recycling program in the same county, the recordkeeping will be simple: the amount of source-separated recyclable material managed by the recycling program must equal 10% or more of the amount of incoming waste processed by all the transfer facilities seeking the exemption. For other transfer stations, the demonstration of compliance with the 10% requirement will be in the form of documents from the source or sources of the waste processed through the transfer facility. The commission intends to include in a guidance document the types of records that will satisfy this requirement. Acceptable documentation of a facility's exemption from permitting requirements under this rule will be similar to the requirements for recycling and composting operations, including signed and dated receipts for the sale of specified amounts of specific processed material(s) or signed and dated bills of lading or shipping manifests showing specific amounts of processed material(s) transferred to a specific site for recycling. No changes have been made to the rule in response to this comment.

Comment

COH offered additional rule language for transfer facilities owned by the operator of a source-separation recycling program in the county where the transfer facility was located.

Response

The commission agrees with this comment as an alternate method for demonstrating compliance with the 10% requirement and has added a new subsection (q)(1)(B) in response to this comment.

Comment

An individual commented on the possibility of a transfer facility exceeding the design capacity of the facility.

Response

The operational standards for a solid waste processing facility in 30 TAC §330.151(a) require a transfer facility not to exceed its design capacity for processing solid waste during operation. A transfer facility seeking an exemption under this rule must register in accordance with §330.65 and must meet the additional design criteria of §330.65(f), which requires design standards that conform with §330.151. This is required by the introductory paragraph for subsection (q) and by renumbered paragraph (4) of subsection (q). A facility that exceeds its design capacity and accumulates waste must stop receiving additional solid waste until the accumulation is abated. No changes have been made to the rule in response to this comment.

Comment

An individual questioned whether a registered transfer facility authorized to process a maximum of 125 tons per day would be allowed to process more than 125 tons per day under this exemption.

Response

A registration for a facility used in the transfer of municipal solid waste that transfers 125 tons per day or less is allowed under §330.4(d). The exemption in §330.4(q) is separate from that exemption and would require a new application with a demonstration that the facility has an operational capacity to process the additional waste. No changes have been made to the rule in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, §361.111, which authorizes the commission to exempt from permit requirements certain municipal solid waste management facilities that meet specific criteria; §361.022, which sets public policy in the management of municipal solid waste to include reuse or recycling of waste; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

§330.4. Permit Required.

(a) No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste (MSW) unless such activity is authorized by a permit or other authorization from the commission, except as provided for in this section. Permits issued by the Texas Department of Health prior to the effective date of this chapter satisfy the requirements of this subsection. No person may commence physical construction of a new MSW management facility or a lateral expansion without first having submitted a permit application in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures) and received a permit from the commission, except as provided for specifically herein.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director may seek recourse against not only the person who stored, processed, or disposed of the waste but also against the transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) A separate permit is not required for the storage or processing of the following types of MSW: grease trap wastes; grit trap wastes; or septage that contains free liquids if the waste is treated/processed at a permitted Type I MSWLF. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(d) A permit is not required for an MSW transfer station facility that is used in the transfer of MSW to a solid waste processing or disposal facility from:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

(3) a facility used in the transfer of MSW that transfers or will transfer 125 tons per day or less; or

(4) a transfer station located within the permitted boundaries of an MSW Type I, Type II, Type III, or Type IV facility as specified in §330.41 of this title (relating to Types of Municipal Solid Waste Sites).

(e) A request for registration for sites or facilities exempted from permits under subsections (c), (d), and (q) of this section must be submitted in a format provided by the executive director and must include all information requested thereon and any additional information considered necessary by the applicant or that may be requested by the executive director.

(f) Facilities must obtain a permit or registration as applicable under subsection (a), (d), or (q) of this section unless otherwise exempted under this chapter, or:

(1) the facility or site is used as:

(A) a citizens' collection station;

(B) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title (relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

(C) a collection and processing point for mulching or composting of only source-separated recyclable material, provided that the facility is in compliance with Chapter 332 of this title (relating to Composting); or

(D) a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks; or

(2) the site is used for the disposal of soil, dirt, rock, sand, or other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted MSW site, or composting facility at an existing permitted MSW site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities). Failure to operate such registered facilities in accordance with the requirements established in §§330.150 - 330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for the revocation of the registration.

(h) A permit is not required for a site or facility where the only operation is the storage and/or processing of used and scrap tires as provided for in Chapter 328 of this title (relating to Waste Minimization and Recycling). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 of this title may be grounds for the revocation of the registration.

(i) A permit or registration under this chapter is not required for the operation of an approved treatment process unit (as provided in §330.1004(c)(1) of this title (relating to Generators of Medical Waste)) used only for the treatment of on-site (as defined in §330.1004(f) of this title) generated special waste from health care-related facilities.

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title.

(k) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste per month and that transports its own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(l) A permit is not required for an on-site medical waste incinerator used by a licensed hospital for incineration of only on-site generated medical wastes.

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). The owner or operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50 - 330.65 of this title to address the items covered by the requested change.

(n) For energy and material recovery and gas recovery operations relating to MSW, a registration is required. A permit is not required for an MSW facility-Type IX that recovers gas for beneficial use. Those Type IX facilities that recover gas for beneficial use that are exempt from permitting under this subsection shall be registered with the executive director in accordance with §330.70 of this title (relating to Registration of Facilities That Recover Gas for Beneficial Use). However, exploratory and test operations for feasibility purposes may be conducted after approval of the operation by the executive director.

(o) Submission of a Soil and Liner Evaluation Report (SLER) and/or a Flexible Membrane Liner Evaluation Report (FMLER) required by §330.206 of this title (relating to Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)) for a liner design which meets all design and operational requirements of §§330.50 - 330.65 of this title and §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation) shall not require a permit amendment or modification.

(p) A permit or registration is not required for the drying of grit trap waste at a car wash facility as long as these wastes are disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to another car wash facility if the facilities have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any MSW Type V transfer station that meets all of the requirements established by this subsection. Owners and operators of Type V transfer stations that meet the permit exemption requirements of this subsection and wish to exercise the exemption option shall register their operation in accordance with §330.60 of this title (relating to Technical Requirements of an Application for Registration of Solid Waste Facilities (Type V and Type VI)) and §330.65 of this title.

(1) Source-separated recycling/materials recovery. Owners and operators of Type V transfer facilities may register their operations in lieu of permitting them, provided:

(A) the transfer facility recovers 10% or more by weight or weight equivalent of the incoming waste stream for reuse or recycling. Incoming waste that has already been reduced by at least 10% through a source-separation recycling program is not subject to this requirement and may be excluded from this calculation. The applicant shall demonstrate in the registration application the method that will be used to assure the 10% requirement is achieved; or

(B) the transfer facility owner and/or operator also operate(s) one or more source-separation recycling programs in the county where the transfer station is located and those source-separation recycling programs manage a total weight or weight equivalent of recyclable materials equal to 10% or more by weight or weight equivalent of the incoming waste stream to all transfer stations to which credit is being applied.

(2) Documentation. After the transfer facility operations commence, documentation of recycling or recovery of 10% of waste material from the waste stream must be annually updated and maintained at the transfer facility for records inspection. Failure to maintain the standard of 10% recovery of materials shall be grounds for revocation of the registration.

(3) Distance to landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining nonrecyclable waste to a landfill not more than 50 miles from the facility.

(4) Exempt facilities. Transfer facilities exempted from a permit under this subsection must register with the executive director

in accordance with §330.60 and §330.65 of this title and meet the additional design criteria of §330.65(f) of this title.

(5) Revocation. Failure to operate registered facilities in accordance with the requirements established in Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for revocation of the registration.

(r) A permit is not required for an MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the executive director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit. A separate permit or registration is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person who intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(s) A permit is not required for an MSW Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes if:

(1) the facility can attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases, and the recovery of food solids for composting, but does not include the recovery of water;

(2) the Type V processing facility is located within the permit boundaries of a commission-permitted Type I landfill; or

(3) the Type V processing facility is located at a manned treatment facility permitted under Texas Water Code, Chapter 26 and which is permitted to discharge at least one million gallons per day and which is owned by and operated for the benefit of a political subdivision of this state. Facilities meeting any of these exemptions must obtain a registration by meeting the operational criteria and design criteria established in §330.71 of this title (relating to Registration for Municipal Solid Waste Facilities That Process Grease Trap Waste, Grit Trap Waste, or Septage).

(t) A registration is required for a mobile liquid waste processing facility that processes grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Mobile liquid waste processing facilities must obtain a registration by meeting the operational criteria and design criteria established in §330.72 of this title (relating to Registration of Mobile Liquid Waste Processing Units).

(u) A permit is not required for an MSW Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.73 of this title (relating to Registration of Demonstration Projects for Liquid Waste Processing Facilities).

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

(7) the waste disposal method complies with §§111.201 - 111.221 of this title (relating to Outdoor Burning);

(8) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance; and

(9) the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title.

(w) A permit or registration is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway right-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway right-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes).

(x) A major permit amendment, as defined by §305.62 of this title, is required to reopen a Type I, Type I-AE, Type IV, or Type IV-AE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable current state, federal, and local requirements, including the requirements of RCRA, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.51(a) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.61 of this title (relating to Land-Use Public Hearing). This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(y) A permit or registration is not required for disposal of the remains from an animal that dies in the care of a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners where all of the following occur:

(1) the veterinarian disposes of the remains of an animal and the remains do not include any other type of medical waste;

(2) the veterinarian does not charge for the disposal;

(3) the disposal is on property owned by the veterinarian;

(4) the disposal occurs in a county with a population of less than 10,000;

(5) the waste disposal does not contribute to a nuisance and does not endanger the public health or the environment;

(6) the veterinarian complies with the deed recordation and notification requirements in §330.7 and §330.8 of this title;

(7) the animal carcasses are covered with at least two feet of soil within 24 hours of disposal in accordance with §330.136(b)(2) of this title;

(8) uncontrolled access is prevented; and

(9) the disposal complies with §111.209 of this title (relating to Exception for Disposal Fires).

(z) A permit by rule is granted for an animal crematory that meets the requirements of §330.75 of this title (relating to Animal Crematory Facility Design and Operational Requirements for Permitting by Rule). Facilities that do not meet all the requirements of §330.75 of this title require a permit under §330.51 of this title.

(aa) A permit or registration is not required for pet cemeteries. However, a person who intends to operate a pet cemetery shall comply with the requirements of §330.7 of this title and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry are not pets.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE

SUBCHAPTER E. PASS-THROUGH TOLLS

43 TAC §§5.51 - 5.59

The Texas Department of Transportation (department) adopts new Subchapter E, §§5.51-5.59, concerning pass-through tolls. Sections 5.51, 5.53, 5.54, 5.57, 5.58, and 5.59 are adopted with changes to the proposed text as published in the February 13, 2004, issue of the *Texas Register* (29 TexReg 1316). Sections 5.52, 5.55, and 5.56 are adopted without changes to the proposed text as published in the February 13, 2004, issue of the *Texas Register* (29 TexReg 1316) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

HB 3588, 78th Legislature, Regular Session, 2003, enacted Transportation Code, §222.104. This section authorizes the department to enter into an agreement with a public or private entity to provide for the payment of pass-through tolls as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by a public or private entity. A pass-through toll is defined by the statute as a per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a facility.

This new program offers the department a new method of financing needed highway projects. It also offers local interests an opportunity to expedite the development of a highway that they desire, but that the department is currently unable to fund. The developer of the project is responsible for building the facility with its own funds, and has the assurance from the department that the state will repay the developer through a payment based on the number of vehicles using the facility or the vehicle miles traveled. If use of that facility is high, typically as believed by the developer, then the developer will be paid back at a quicker rate. If traffic is lower than projected, repayment will occur over a longer period.

The rules prescribe the policies and procedures governing the department's implementation of Transportation Code, §222.104.

Section 5.51 states the purpose of the subchapter, which is to implement Transportation Code, §222.104(b).

Section 5.52 defines words and terms used in the subchapter.

Section 5.53 describes how a developer can submit a proposal to the department. To allow the department and the Texas Transportation Commission (commission) to properly consider the merits of a proposal and consider the criteria described in §5.54, the proposal must include: a description of the project; a statement of the benefits of the project; a proposed project development and implementation schedule; a description of the qualifications and experience of the developer; if available, a proposed pass-through toll payment schedule; a statement indicating whether the proposer intends for the project to be tolled, and if the proposer intends for a tolled project to be first opened to traffic as a non-tolled highway, the approximate date on which the highway will begin to be tolled; and a statement indicating whether the proposer intends to enter into a comprehensive development agreement, if the proposer is a private entity. The section authorizes the department and a private entity to agree to develop a project under a comprehensive development agreement (CDA) if authorized by law. Rules governing CDAs will governing the solicitation, advertisement, negotiation, and execution of a CDA.

Section 5.54 lists the factors the commission will consider when deciding whether to approve a proposal and authorize the department to negotiate an agreement. To help ensure that a proposal is beneficial to the State of Texas, the commission will consider the financial benefits of the proposal. Consistent with the department's historical practices, the commission will consider local support for the project. To help ensure that the project will benefit the state's transportation system, the commission will

consider whether the project is in the department's Unified Transportation Program, the extent to which the project will relieve congestion on the state highway system, and the compatibility of the proposed project with existing and planned transportation facilities. To help promote public health, and consistent with state policy, the commission will consider potential benefits to regional air quality that may be derived from the project. To help ensure that a private developer will deliver a quality facility, the commission will consider the qualifications and experience of the proposer to accomplish the work.

Section 5.55 provides a competitive process for proposals submitted by private entities, if the proposal has been approved by the commission under §5.54. The department will publish notice in the *Texas Register* and one or more newspapers for the purpose of soliciting competing proposals. The section sets out a competitive selection process very similar to the unsolicited proposal process the commission has prescribed for comprehensive development agreements. This process ensures fair competition that will allow the department to select the proposal with the best value to the state.

Section 5.56 provides that the department will submit a summary of the final terms of a successfully negotiated pass-through toll agreement to the commission. The commission may authorize the department to execute the agreement if it finds that the agreement is in the best interest of the state, and that the project is compatible with existing and planned transportation facilities and furthers state, regional, and local transportation plans, programs, policies, and goals. This section is intended to provide another level of oversight to ensure that the result of the negotiations is positive for the state and for transportation.

Section 5.57 describes the policies governing the payment of pass-through tolls. The department will reimburse the developer, through the periodic payment of pass-through tolls, an amount equal to the department's estimate. The department's estimate will be developed or updated after receipt of the proposal. It is an estimate of what it would cost the department to construct the project. Payment of this amount will ensure that the developer is not overcompensated for the work. The commission may direct the department to reimburse the developer an amount less than the estimate if the project's estimated benefits to mobility do not warrant full reimbursement or the construction will result in a significant economic gain to the developer. This policy is intended to ensure that the public's interest is safeguarded. The commission may also direct the department to reimburse the developer an amount less than the estimate if the developer proposes to share in the cost of the project. The commission may direct the department to reimburse the developer an amount greater than the estimate if the commission determines there will be a financial benefit to the state, through the avoidance of inflation, as a result of the earlier completion of the project. The department would pay this additional amount if the project was developed using traditional methods. Accordingly, the increased payment to the developer reflects what it would cost the department to construct the project if a pass-through toll agreement was not used, and ensures that the developer is not overcompensated for the work. The amount of reimbursement above the estimate may not be more than the amount of the financial benefit determined by the commission.

Section 5.57 provides that the payment schedule will be based on the department's traffic projections and a contract period to be negotiated between the department and the developer. The payment schedule may include a maximum and minimum annual amount. A guaranteed minimum will assist a developer in arranging financing and help ensure that it gets reasonable compensation for delivering a needed asset. A maximum payment will ensure that the department is not required to expend an amount of funds in a way that could jeopardize funding for higher priority projects.

Section 5.57 provides that the developer is responsible for cost overruns unless the department agrees to share identified cost overruns. This policy provides some flexibility for the parties to share certain identified risks in order to prevent an unjust result, yet places the primary responsibility on the developer. To provide an incentive for developers to participate in the program and reward them for innovative construction, the section also provides that the developer is not required to repay the department the difference between the actual costs and the amount designated in the agreement.

Section 5.57 provides that if traffic volume exceeds projections, the department will not be responsible for annual payments above the maximum amount designated in the agreement. If traffic volume is less than projected, the department will pay at least the minimum amount designated in the agreement. If traffic volume exceeds projections, the department may agree to reduce the time period in which the developer is reimbursed the amount designated in the agreement. If traffic volume is less than projections, the term of the agreement will be extended until the developer is reimbursed the amount designated in the agreement. This policy places the burden on the developer to attract traffic, complete construction of the facility, and keep the facility open by providing quality construction. It also allows for minimum and maximum payments to provide for the necessary flexibility discussed previously.

Section 5.58 describes the responsibilities of the developer in developing and constructing a facility. An environmental review must be completed in accordance with the commission's rules governing department transportation projects. The facility must be designed and constructed in accordance with department standards and criteria unless exceptions are approved by the executive director.

Section 5.59 provides that a pass-through agreement may provide for a developer to operate a highway. A developer may operate a highway that it has constructed. A developer may also propose to operate an existing state highway. Except as provided in the agreement, the developer is responsible for performing all of the work required to operate the highway. In performing work, the developer must meet or exceed the most current Texas Maintenance Assessment Program minimum rating requirements for non-interstate state highways as established by the commission. A developer may receive approval to use alternative maintenance standards if the executive director determines that the alternative standards are sufficient to protect the safety of the traveling public and protect the integrity of the transportation system. This section ensures proper maintenance and operation while providing some flexibility for the developer to be innovative.

COMMENTS

On February 24, 2004, a public hearing was held to receive comments, views, or testimony concerning the proposed new sections. Several comments were received from Terry Hughes, representing the City of Weatherford at this hearing. The City of Weatherford and John Langmore Consulting (JLC) also submitted written comments on the proposed new sections.

Section 5.52, Definitions

Comment: JLC argued that the rules should allow the option for a pass-through toll project to be carried out under a comprehensive development agreement (CDA). JLC suggested adding a definition of "agreement" to read: "A pass-through toll agreement with an authorized entity, which may include a comprehensive development agreement as defined in Section 361.302, Transportation Code and which shall include those provisions set forth in Section 5.58(e) of these rules."

Response: Under current law, the department may use a CDA with a private entity to finance, design, construct, maintain, operate, or expand a department turnpike or the Trans-Texas Corridor. So a private entity developer who is developing a turnpike or a facility that is a part of the Trans-Texas Corridor under a pass-through toll agreement may, if agreed to by the department, do so under a CDA. The department agrees that the rules should be clarified to acknowledge the possibility that a pass-through toll project may be developed under a CDA under some circumstances. Instead of doing so through a new definition, §5.53 is revised to allow for proper notification to the commission of the developer's intent and to provide some explanation to the public. Section 5.53(a) is revised to require a private entity proposer to submit in its proposal a statement indicating whether the proposer intends to enter into a CDA. Subsection (a) is also revised by changing "developer" to "proposer" to be consistent in terms. A new subsection (c) is added to state, "The private entity and the department may agree to develop a project under a comprehensive development agreement if authorized by other law. Notwithstanding any other provision of this subchapter, Chapter 27, Subchapter A, of this title (relating to Policy, Rules, and Procedures for Private Involvement in Department Turnpike Projects), applies to the solicitation, advertisement, negotiation, and execution of a comprehensive development agreement." This last sentence is added to clarify that the department's CDA rules will govern a CDA executed as part of a pass-through toll agreement.

Comment: JLC suggested adding a definition of: "entity" as any public or private entity authorized to enter into a pass-through toll agreement; "agency" as a public entity authorized to enter into a pass-through toll agreement; and "developer" as a private entity that enters into a pass-through toll agreement. JLC offers these definitions as a method to make the rules easier to follow, particularly in light of various other JLC suggestions and for the following reason. JLC argues that the pass-through toll statute, Section 222.104, contemplates the use of pass-through tolls under two circumstances. Subsection (b) applies to an agreement with a public or private entity for payment of pass-through tolls as reimbursement for construction, maintenance, or operation of a state highway. Subsection (c) applies to an agreement with a public or private entity for payment of pass-through tolls as compensation for the costs of maintaining a state highway converted to a toll facility. JLC argued that by defining a "developer" as either a public or private entity, it becomes difficult to use the term "developer" in those contexts that apply (or do not apply) solely to private entities.

Response: The department disagrees with these suggestions. The rules are intended to only implement subsection (b) of Transportation Code, §222.104. Section 5.51, Purpose, is revised by adding subsection (b) to the legal cite to clarify the scope of the rules.

Comment: The term "Department estimate" is defined as an "estimate of what it would cost the department to complete the work proposed by the developer. The estimate is developed or updated by the department after receipt of a developer's request and prior to the time the department executes an agreement with the developer." JLC argues that parts of the definition are not consistent with the statute in that the term "estimate" is only referenced in subsection (c) of the state law. JLC further argues that the definition does not state by which method the department's cost of construction would be determined. For instance, an estimate using a CDA may be lower than an estimate using design-bid-build. JLC suggests revising the term so that it only applies to the maintenance of an existing facility by a public entity.

Response: The department disagrees with this comment. The statute provides for the department to "reimburse" the developer. The statute further grants the commission rulemaking power to implement the program. The department was obligated to develop a method by which it would determine the amount of reimbursement. The commission, by rule, chose the department's estimate. This method not only helps ensure that the department receives fair value and protects the taxpayer, but it also appropriately places the risk on the developer to design and build the project efficiently and innovatively. The department does not agree that it would be practical or beneficial to either the department or the developer to attempt to describe, by rule, a method by which the cost of construction will be determined.

Comment: JLC suggested amending the definition of "Pass-through Toll" to add, "The per vehicle fee may vary by agreement within different bands of traffic volume and by type of vehicle using the facility."

Response: The department agrees with this comment. This addition will help to further inform the public and potential proposers of the alternative methods by which the department may reimburse the developer. The department, however, does not agree that this revision belongs in a definition. The following language has been added to §5.57, Payment of Pass-through tolls, under subsection (b): "Variable payments. The per vehicle fee may vary within different levels of traffic volume and by type of vehicle using the facility." The department believes that the term "levels" is more informative than the term "bands." It is not necessary to say, "by agreement" since the payment schedule and method is already required to be mutually agreed upon.

Section 5.53, Proposal

Comment: JLC asserts that developers may want to propose a series of projects in one pass-through toll proposal. The section requests proposers to submit information on one project. JLC suggests revising the section to allow the submittal of multiple projects.

Response: The department agrees with this suggestion. This concept may help expedite the development of multiple projects. Subsection (a) is revised to allow a proposer to submit a project or a series or projects.

Comment: Subsection (b) provides that, if requested, and unless prohibited by law, the department will release to the public a proposal submitted under this section. JLC argues that some pass-through toll facilities may be proposed as candidates for comprehensive development agreements (CDAs), and that this provision appears to contradict legislative intent set forth in Transportation Code, Section 361.3023.

Response: The department disagrees with this comment. The rule provides "unless prohibited by law" to ensure that the department does not violate a statute applicable to a particular situation.

Section 5.54, Commission Approval to Negotiate

Paragraphs (4), (6), (7), and (8) were revised to correct nonsubstantive grammatical errors.

Section 5.55, Proposals from Private Entities

Comment: Subsection (e) provides that the original proposer may submit a revised proposal in response to a notice requesting competing proposals. JLC stated that if a fee is required for the original proposal submitted as a CDA, it should be clarified that the original proposer is not required to submit an additional fee.

Response: The department's CDA rules will govern this circumstance. Those rules only require the proposer to provide a proposal review fee with the original unsolicited proposal. No change is needed to this section.

Comment: Subsection (h) provides that if an agreement satisfactory to the department cannot be negotiated with the proposer, the department will formally end negotiations with that proposer. JLC suggests revising the subsection to state that the department cannot end negotiations until the department "has provided clear information in writing to the proposer identifying any concerns the department may have with the negotiations and granted the proposer sufficient time to resolve such issues." JLC argues that, "since no pass-through toll agreements have been negotiated in Texas, it may be difficult for the parties to assess the other's negotiating position. Given the high costs that a proposer will incur in submitting a proposal, the department should provide clear information explaining its concerns and its approach to mitigating such concerns in sufficient time for the parties to attempt in good-faith to resolve such issues"

Response: The department disagrees with this comment. While the department will negotiate in good faith and intends to end negotiations only if necessary, the suggested language gives a private proposer more rights than a public proposer has under these rules or a proposer has under the department's current CDA rules. The language, codified as a rule, could be interpreted to give a proposer legal rights that could work contrary to the public interest and lead to litigation. The department must have the ability to end negotiation at any time at its discretion.

Comment: The City of Weatherford (city) commented that §5.55 addresses the requirement for a 45-day time frame allowing submission of competing proposals. The city believes that the section is written such that the provision applies only to private proposals. However, the city suggested that this section be clarified that proposals brought by public entities, such as city governments, are not subject to the competing proposal clause.

Response: The department does not agree that the section needs clarification. The section is titled, "Proposals from Private Entities." The section further states that, "If the commission approves the further evaluation of a proposal of a private entity under §5.54 of this subchapter, the department will publish notice of that decision and provide an opportunity for the submission of competing proposals." The rules, therefore, do not subject proposals brought by public entities to the competition requirements of §5.55.

Section 5.57, Payment of Pass-Through Tolls

Comment: The city commented that §5.57, which addresses payment of pass-through tolls, needs clarification. The city stated that it would be helpful for an entity, either public or private, to understand the source of funds that will be used for the payment. In order for an entity to enter into an agreement, particularly a public entity, substantial assurance that the funds will be available for payment beyond the current appropriations period is necessary. In addition, assurances that the agreements entered into under the current administration will not be subject to termination should administration change occur in future years is desirable. The city requested that agreements entered into with any public or private entity be written into the appropriations as an obligation of the commission, and that such obligation cannot be removed until such time as the terms of the agreement are met.

Response: The department disagrees with these comments. The rules have been drafted to allow for maximum latitude in using legally available funds. It is anticipated that all agreements under these rules will be negotiated so as to be mutually beneficial, and it is the department's intent to include termination provisions that are fair to both parties. Constitutional restraints make it impossible to provide any assurance that future legislatures will appropriate the necessary funding. Article 8, Section 6, of the Texas Constitution provides that no appropriation may be made for a period longer than two years. The state may enter into a long-term binding agreement to pay out appropriated funds only if payment is conditioned on the availability of appropriated funds. Because appropriations are made by the legislature and not by individual agencies, the rulemaking process is not the forum in which to request specific appropriations.

Comment: Subsection (a)(1) provides, "Except as provided in paragraph (2) of this subsection, the department will reimburse the developer, through the annual payment of pass-through tolls, an amount equal to the department estimate." JLC argued that the requirement of "annual" payments limits flexibility in negotiating agreements.

Response: The department agrees with this comment. To provide greater flexibility, the word "annual" is revised to "periodic."

Comment: Concerning this same subsection, JLC argued against using the estimate as the basis for compensation. JLC asserted that this could significantly impair investors' and lenders' interest in the development of projects. Their ability to recover their costs and earn a reasonable return on their investment would be governed not by actual costs, but by estimates prepared by the department. JLC further asserted that the concern about the developer being overcompensated for the work is addressed appropriately by the department requiring competitive bids, and that the lowest cost offered by a fully competitive marketplace should drive the developer's compensation, not an estimate of what it should cost.

Response: The department disagrees with this comment. The commenter paraphrased the statute in an earlier comment as authorizing agreements that provide for the payment of pass-through tolls to the public or private entity as "compensation." The statute actually says "reimbursement." To reimburse "actual" costs would be impractical for both the department and the developer, and would require tremendous department oversight. The department continues to be of the opinion that reimbursing the developer an amount equal to the department's cost to do the work is the most fair, practical, and effective method to implement the program. This method not only helps ensure that the department receives fair value and protects the taxpayer, but

it also appropriately places the risk on the developer to design and build the project efficiently and innovatively.

Comment: The section provides that the commission may direct the department to provide for reimbursement in an amount less than the department estimate under certain circumstances. JLC argues that it would be very difficult for both the private and public sector to obtain financing for a pass-through toll project if the department has the ability to unilaterally reduce the amount of reimbursement after the agreement has been executed.

Response: The department disagrees with this comment. The rule does not allow the commission to unilaterally direct the department to reimburse the developer an amount less than the department. The developer has the ability to not accept the department's offer and not execute a pass-through toll agreement. The agreement will set the amount of reimbursement and that amount can only be revised by agreement of the parties.

Comment: The section authorizes the commission to direct the department to provide for reimbursement in an amount less than the department estimate if: it determines that the project's estimated benefits to mobility do not warrant full reimbursement; it determines that the construction of the project will result in a significant economic gain to the developer; or the developer agrees to share in the cost of the project. JLC commented that it is unclear who is making the determinations and suggest changing "it" to "department" in the first two issues, argues that the first two issues are subjective standards, and suggests changing "developer" to "public entity" in the third issue.

Response: The department disagrees with these comments. In the first two issues, the rule is speaking of the commission. The commission must make those determinations. The department believes that the context is clear. In regard to the assertion that the first two issues are subjective standards, the department believes that they are necessary to give the commission the necessary discretion to consider pertinent issues and properly notify the public and proposers of the issues that the commission will consider. The third issue merely recognizes that a developer, public or private, may choose to participate financially in the project.

Comment: The section provides that the commission may direct the department to provide for reimbursement in an amount more than the department estimate if the commission determines that there will be a financial benefit to the state, through the avoidance of inflation, as a result of building the project sooner. JLC argued that any reimbursement of a developer should be made pursuant to the agreement only and should not be governed by the rules or benchmarked off the department estimate. JLC further argues that there is no guidance as to how inflation is determined.

Response: The department disagrees with these comments. JLC misinterpreted this provision. Reimbursement of a developer can only be determined by the agreement. The department does not believe it is appropriate to attempt to lock both sides, by rule, into a method of how to determine inflation.

Comment: The section provides that the schedule of pass-through toll payments will be calculated based on traffic projections for the highway and a contract period to be negotiated. JLC suggested revising the language to provide for "mutually agreed to traffic projections."

Response: The department disagrees with this suggestion. The department desires to use its own traffic projections to avoid debate over whose numbers would be used, and to help ensure the reliability of the projections.

Comment: The section provides that if actual costs are below the department estimate, the developer is not required to repay the department the difference between the actual costs and the amount designated in the agreement. JLC suggested adding before this language, "Unless otherwise specified in the agreement."

Response: The department disagrees with this comment. Committing to the developer that the department will reimburse the developer the amount of the estimate is a fundamental provision of the program that will assist the developer in obtaining financing and will encourage innovation.

Comment: The section provides that if traffic volume exceeds projections, the department will not be responsible for annual payments above the highest amount designated in the agreement. If traffic volume is less than projected, the department will pay at least the lowest amount designated in the agreement. JLC suggested adding before this language, "Unless otherwise specified in the agreement."

Response: The department disagrees with this comment. The department believes it is important to state by rule that the department cannot be liable for payments above those designated in the agreement. Otherwise, the department could lose control of its financial and transportation planning process, and a pass-through toll agreement would have the potential to inappropriately re-prioritize the department's project programming for a region.

Comment: The section provides that "if traffic volume exceeds projections, the department may agree to reduce the time period in which the developer is reimbursed the amount designated in the agreement. If traffic volume is less than projected, the term of the agreement will be extended until the developer is reimbursed the amount designated in the agreement." JLC argued that if traffic exceeds projections, a reduced repayment period will occur naturally through the payment of pass-through tolls at a faster rate than anticipated. The same occurs in the opposite direction if traffic volume is less than projected. JLC further argues that it should not be made subject to department discretion to reduce or extend the payback period. JLC, therefore, suggests repealing the quoted language.

Response: The department disagrees with the comment. The rule does not allow the department to reduce or extend the payback period unilaterally. The department and the developer must agree to repayment terms. The department does not agree that a reduced repayment will occur naturally. Under the rules, the amount of the pass-through toll, along with the repayment period negotiated by the parties, is used to determine the amount of the periodic payment made under the agreement, but does not otherwise affect the payment amount. The language is also necessary to notify the public of how the process will work.

Section 5.58, Project Development

Comment: Regarding §5.58(a)(2), which requires the commission to approve each environmental review, the city commented that it is their understanding that the environmental review process is generally handled by resource agencies such as the department's Environmental Affairs Division and the Texas Commission on Environmental Quality. Therefore, §5.58(a)(2)

appears to add significant effort for the commission itself and adds additional time to the overall process.

Response: The department disagrees with this comment. Section 5.58(a)(2) does not alter the environmental review process. It merely requires the commission to adopt an order approving the process. The department does not anticipate that this requirement will add any time to the project development process or add significant effort on the part of the commission.

Comment: The section provides that the developer is fully responsible for the design, construction, and operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all environmental permits, issues, and commitments (EPIC) are addressed in project design and carried out during project construction and operation. JLC suggests revising the language to state, "The developer is responsible for the design, construction, maintenance, and operation, as applicable, of each project it undertakes consistent with other law governing these services provided to the department. If set forth in the agreement, this responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation. Any project done as a comprehensive development agreement shall be governed by the terms of 361.302, Transportation Code." JLC argues that: this language "should be consistent with other provisions of existing law governing the design, construction and operation of facilities;" CDAs should be governed by Section 361.302, Transportation Code; and "fully responsible" is a subjective term for defining a developer's responsibility for design, construction, and operation.

Response: The department disagrees with these comments. Adding the term "maintenance" is not necessary since the term "operation" is defined in §5.52 to include maintenance. The department does not believe that the language is in any way inconsistent with other provisions of law. The department has responded to comments concerning CDAs with the previously described revisions to §5.53. The department does not believe that the term "fully responsible" will be problematic. It puts the public and the developer on notice that the developer is the responsible party. More specific terms may be described within the agreement.

Comment: The section prescribes design standards for the developer to follow in designing a project. JLC suggested allowing for exceptions to be consistent with provisions governing CDAs.

Response: The department disagrees with this comment. Section 5.53 was amended to recognize laws and regulations governing CDAs.

Comment: The section provides that "access to the facility shall be in compliance with the department's access management policy." JLC suggests adding to the beginning of this language, "Unless otherwise set forth in the agreement."

Response: The department disagrees with this comment. A facility constructed under this subchapter is a state highway. There would be no justification for the facility to not comply with the department's access management policy.

Comment: The section requires the developer to send preliminary design information to the department for approval when the design is approximately 30% complete. JLC suggests adding language to allow exceptions.

Response: The department agrees with this comment. There may be circumstances justifying exceptions. Section 5.58(b)(4) is revised to read, "When design is approximately 30% complete (or as otherwise provided in an agreement), the developer shall..."

Comment: The section requires a developer to construct a facility in accordance with the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges. JLC suggested allowing an agreement to provide otherwise. JLC argued that these provisions should be consistent with those governing CDAs.

Response: The department disagrees with this comment. Revisions made to §5.53 recognize law and rules governing CDAs. This section of the rules establishes a procedure allowing for exceptions to the department's specifications.

Comment: The section provides that "when final plans are complete, the developer shall send" various information to the department for review and approval. JLC suggested adding at the beginning of the quoted language, "Unless otherwise set forth in an agreement."

Response: The department disagrees with this comment. The developer is designing a state highway. That highway is owned by the state and the state is responsible to the public for its safe operation. It is important that the department receive in a timely manner the final plans for the facility.

Comment: The section sets out various requirements and procedures governing construction field changes. JLC suggested adding language allowing for exceptions to these requirements.

Response: The department disagrees with this comment. The section provides sufficient flexibility yet ensures proper department oversight of the construction of a state highway.

Comment: The section requires the developer to provide the department all materials used in the development of the project. JLC suggests limiting the provision to require the developer to provide "copies of all applicable non-proprietary engineering materials . . ." JLC argued that some of the developer's data may be unique or confidential.

Response: The department disagrees with this comment. The developer designed and built a state highway. That highway is owned by the department and is the responsibility of the department. The developer designed and built the highway on behalf of the department. It is imperative, for the future maintenance, operation, and reconstruction of the highway, that the department retain all materials relating to the development of its highway.

Comment: The section requires the developer to "comply with all federal and state law and regulations applicable to the project and the state highway system." JLC suggested adding at the end of this language, "consistent with Transportation Code, Section 222.104."

Response: The department disagrees with this comment. The existing language already requires compliance with §222.104.

Section 5.59, Operation

Comment: Subsection (a) provides that a pass-through toll agreement may provide for a developer to operate a highway. JLC suggested adding the term "maintain" to recognize that a developer may also maintain a highway.

Response: The department disagrees with this comment. Subsection (b) makes it clear that the term "operate" includes maintenance.

Comment: Subsection (b) provides, "To the extent provided in the agreement, a developer shall perform or cause to be performed all work required to operate the highway. This work includes all maintenance and repair required to ensure that the highway is kept in its designed and constructed or updated condition, and the highway functions as intended." JLC suggested deleting this language and argued that these provisions should be governed in their entirety through an agreement between a developing entity and the department.

Response: The department disagrees with this comment. The existing language provides sufficient flexibility yet helps ensure that the facility will be properly maintained.

Comment: Concerning subsection (b), which states that the roadway will be maintained in its designed and constructed or updated condition, the city commented that payments are generally designed for an initial serviceability index of 4.7 to 4.5 with repairs and overlays generally warranted when the serviceability index decreased to approximately 2.5. It is the city's understanding that this generally occurs after 7 to 10 years of use. The city stated that expectations that a public or private entity can maintain a serviceability index of 4.7 to 4.5 at all times during the life of the agreement does not appear to be a reasonable standard for maintenance.

Response: The department agrees that it is not reasonable to expect a highway to function like new during its entire life. The department maintains and rehabilitates the roadway to keep the highway at reasonably high standards. The subsection is revised to state, "This work includes all maintenance and repair required to ensure that the highway functions as intended and meets the performance standards established for maintenance under subsection (c) of this section."

Comment: Regarding, §5.59(c), which states that the developer shall meet or exceed the most current Texas maintenance assessment program minimum rating for interstate highways, the city commented that many of the roads that may be constructed under pass-through toll agreements are considered arterials or multi-lane rural highways. The city stated that maintenance of a local roadway to interstate highway standards does not appear to be consistent with the intent of the rules. In addition, the city requested clarification that the terms of maintenance by a public or private entity not exceed the term of the agreement.

Response: The department agrees with the city's concern about requiring the equivalent of local roads to be maintained to interstate standards. Interstate standards should be required only for toll facilities. The subsection is revised as follows: "In performing work under this section, the developer shall meet or exceed the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways as established by the commission in its implementation of Government Accounting Standards Board Statement No. 34. If the highway will be tolled, the developer shall meet or exceed the minimum rating requirements for interstate highways." The terms of maintenance by a public or private entity may not exceed the term of the agreement.

Comment: JLC suggested revising subsection (c) to allow the agreement to alter the terms of the subsection.

Response: The department disagrees with this comment. Paragraph (2) of the subsection allows for the approval of alternative maintenance standards. Amending paragraph (1) to essentially allow the parties to waive the subsection nullifies its provisions and provides no comfort to the public that the facility will be properly maintained.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.104, which authorizes the commission to adopt rules necessary to implement that section relating to pass-through tolls.

CROSS REFERENCE TO STATUTE: Transportation Code, §222.104.

§5.51. Purpose.

Transportation Code, §222.104(b) authorizes the Texas Department of Transportation to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. This subchapter prescribes the policies and procedures governing the department's implementation of Transportation Code, §222.104(b).

§5.53. Proposal.

(a) A governmental entity authorized to finance, construct, maintain, or operate a state highway or a private entity may submit in writing to the department a proposal for a project, or a series of projects, to be developed under a pass-through toll agreement. The proposal must include:

(1) a description of the project, including the project limits, connections with other transportation facilities, and a description of the services to be provided by the developer;

(2) a statement of the benefits anticipated to result from completion of the project;

(3) a description of the local public support for the project and any local public opposition;

(4) a proposed project development and implementation schedule;

(5) a description of the entity's experience in developing highway projects, if the proposer is a public entity;

(6) complete information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, and the capability of the proposer to develop the proposed projects, if the proposer is a private entity;

(7) if available, a proposed pass-through toll payment schedule;

(8) a statement indicating whether the proposer intends for the project to be tolled and, if the proposer intends for a tolled project to be first opened to traffic as a non-tolled highway, the approximate date on which the highway will begin to be tolled; and

(9) a statement indicating whether the proposer intends to enter into a comprehensive development agreement, if the proposer is a private entity.

(b) If requested, and unless prohibited by law, the department will release to the public a proposal submitted under this section.

(c) The private entity and the department may agree to develop a project under a comprehensive development agreement if authorized by other law. Notwithstanding any other provision of this subchapter, Chapter 27, Subchapter A, of this title (relating to Policy, Rules, and Procedures for Private Involvement in Department Turnpike Projects), applies to the solicitation, advertisement, negotiation, and execution of a comprehensive development agreement.

§5.54. Commission Approval to Negotiate.

The commission may authorize the executive director to negotiate an agreement under this subchapter or, if the proposer is a private entity, authorize the department to solicit competitive proposals under §5.55 of this subchapter, after considering the:

(1) financial benefits to the state;

(2) local public support for the project;

(3) whether the project is in the department's Unified Transportation Program;

(4) extent to which the project will relieve congestion on the state highway system;

(5) potential benefits to regional air quality that may be derived from the project;

(6) compatibility of the proposed project with existing and planned transportation facilities;

(7) entity's experience in developing highway projects, if the proposer is a public entity; and

(8) qualifications of the proposer to accomplish the proposed work, if the proposer is a private entity.

§5.57. Payment of Pass-Through Tolls.

(a) Amount to be reimbursed.

(1) General. Except as provided in paragraph (2) of this subsection, the department will reimburse the developer, through the periodic payment of pass-through tolls, an amount equal to the department estimate.

(2) Exception.

(A) The commission may direct the department to provide for reimbursement in an amount less than the department estimate if:

(i) it determines that the project's estimated benefits to mobility do not warrant full reimbursement;

(ii) it determines that the construction of the project will result in a significant economic gain to the developer; or

(iii) the developer proposes to share in the cost of the project.

(B) The commission may direct the department to provide for reimbursement in an amount more than the department estimate if the commission determines that there will be a financial benefit to the state, through the avoidance of inflation, as a result of building the project sooner. The additional amount authorized by the commission may not be more than the amount of the financial benefit determined by the commission.

(C) The commission may establish the precise amount to be reimbursed or may establish parameters within which the executive director may negotiate.

(b) Payment schedule and method.

(1) Payment schedule. The schedule of pass-through toll payments will be calculated based on the department's traffic projections for the highway and a contract period to be negotiated between the department and the developer. The payment schedule may include a maximum and a minimum annual amount to be paid. Payments will be made in accordance with subsection (c)(2) of this section.

(2) Variable payments. The per vehicle fee may vary within different levels of traffic volume and by type of vehicle using the facility.

(c) Allocation of risk.

(1) Construction and operation costs.

(A) Cost overruns. Unless otherwise specified in the agreement, the developer is responsible for cost overruns caused by any reason. The department may agree to share identified cost overruns if it deems such action to be in the state's interest. The department may agree to alter the payment schedule based upon cost overruns provided that the agreement establishes a maximum amount or rate by which the department will do so.

(B) Cost underruns. If actual costs are below the department estimate, the developer is not required to repay the department the difference between the actual costs and the amount designated in the agreement.

(2) Traffic volume.

(A) If traffic volume exceeds projections, the department will not be responsible for annual payments above the highest amount designated in the agreement. If traffic volume is less than projected, the department will pay at least the lowest amount designated in the agreement.

(B) If traffic volume exceeds projections, the department may agree to reduce the time period in which the developer is reimbursed the amount designated in the agreement. If traffic volume is less than projected, the term of the agreement will be extended until the developer is reimbursed the amount designated in the agreement.

§5.58. Project Development.

(a) Social and environmental impact.

(1) General. A developer that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Commission approval. The commission must approve each environmental review under this section before construction of the project begins.

(b) Design and construction.

(1) Responsibility. The developer is fully responsible for the design, construction, and, operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the developer shall comply with the latest version of the department's manuals, including, but not limited to, the Roadway Design Manual, Pavement Design Manual, Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, and Bridge Design Manual, and the Texas Accessibility Standards.

(B) Alternative criteria. A developer may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include, but are not limited to, the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A developer may request approval to deviate from the state or alternative criteria for a particular design element on a case by case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Access.

(A) Access management. Access to the facility shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed projects that will change the access control line to an interstate highway, the developer shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete (or as otherwise provided in an agreement), the developer shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in subsection (d) of this section:

(A) a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Construction specifications.

(A) All plans, specifications, and estimates developed by or on behalf of the developer shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the developer shall send the following information to the executive director for review and approval in accordance with the procedures and timelines established in the project development agreement described in subsection (e) of this section:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously approved by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(7) Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the developer is responsible for:

(i) overseeing all construction operations, including the oversight and follow through with all EPIC;

(ii) assessing contract revisions for potential environmental impacts; and

(iii) obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(8) Contract revisions. All revisions to the construction contract shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the executive director for approval prior to beginning the revised construction work. Procedures governing the executive director's approval, including time limits for department review, shall be included in the project agreement described in subsection (e) of this section.

(9) As-built plans. Within six months after final completion of the construction project, the developer shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(10) Document and information exchange. The developer agrees to deliver to the department all materials used in the development of the project including, but not limited to, aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(11) State and federal law. The developer shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(c) Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(d) Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

(e) Project development agreement. The developer and the department shall enter into an agreement governing the development of a project under this subchapter. The agreement shall, at a minimum, include:

(1) the responsibilities of each party concerning the design and construction of the project;

(2) procedures governing the submittal of information required by this subchapter;

(3) timelines governing approvals of the executive director under this subchapter; and

(4) other terms or conditions mutually agreed upon by the parties.

§5.59. Operation.

(a) Agreement. A pass-through toll agreement may provide for a developer to operate a highway.

(b) Responsibility. To the extent provided in the agreement, a developer shall perform or cause to be performed all work required to operate the highway. This work includes all maintenance and repair required to ensure that the highway functions as intended and meets the performance standards established for maintenance under subsection (c) of this section.

(c) Maintenance.

(1) Department standards. In performing work under this section, the developer shall meet or exceed the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways as established by the commission in its implementation of Government Accounting Standards Boards Statement No. 34. If the highway will be tolled, the developer shall meet or exceed the minimum rating requirements for interstate highways.

(2) Alternative standards. A developer may request approval to use alternative maintenance standards. The executive director may approve the use of alternative maintenance standards if the director determines that the alternative standards are sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Department of Transportation
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CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER N. STATE HIGHWAY PROJECTS FINANCED THROUGH THE ISSUANCE OF BONDS AND OTHER PUBLIC SECURITIES

43 TAC §§15.170 - 15.174

The Texas Department of Transportation (department) adopts new §§15.170-15.174, concerning the issuance of bonds and other public securities by the Texas Transportation Commission (commission) to finance state highway system improvement projects. Sections 15.170 and 15.171 are adopted with changes to the proposed text as published in the January 2, 2004, issue of the *Texas Register* (29 TexReg 66). Sections 15.172-15.174 are adopted without changes to the proposed text as published in the January 2, 2004, issue of the *Texas Register* (29 TexReg 66) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

House Bill 3588, 78th Legislature, Regular Session, 2003, added Transportation Code, §222.003, to allow the commission to issue bonds and other public securities to fund state highway improvement projects. These bonds or other public securities will be secured by a pledge of and payable from funds deposited to the credit of the state highway fund.

Bonds or other public securities may be issued in an aggregate principal amount not to exceed $3 billion, and no more than $1 billion may be issued per year. Of the total amount of securities that may be issued ($3 billion), no less than $600 million must be used to fund projects that reduce accidents or correct hazardous locations on the state highway system.

The commission is directed by the statute to establish by rule the project selection criteria for these projects. The commission is further directed to consider certain factors in the selection of safety projects funded with the proceeds of these securities. The statute prohibits the use of these proceeds to construct a state highway or other facility on the Trans-Texas Corridor.

SECTION BY SECTION ANALYSIS

Section 15.170, Purpose, describes the purpose of the subchapter, which is to prescribe policies and procedures that will be used to select projects funded under Transportation Code, §222.003.

Section 15.171 defines words and terms used in the subchapter.

Section 15.172, Applicability, notes the restriction on the use of proceeds issued under this subchapter for construction of a state highway or other facility on the Trans-Texas Corridor. This section also notes that at least $600 million of the total aggregate amount of $3 billion must be used for safety projects.

Section 15.173, State Highway Improvement Projects, lists eligible projects that may be funded with the proceeds of bonds or other public securities issued under this subchapter. The section also describes selection criteria the department will consider in project selection.

Section 15.174, Safety Projects, lists eligible safety projects that may be funded with the proceeds of bonds or other public securities issued under this subchapter. The section also describes selection criteria the department will consider in project selection. The section requires the department to consider accident data, traffic volume, and pavement geometry as required by House Bill 3588.

COMMENTS

Three comments were received on the proposed new sections.

Comment: First Southwest Company (FSC) suggested that the department add the phrase "secured by a pledge of and" to §15.170 after the term "public securities" to clarify for potential bondholders/creditors that revenue in the state highway fund is pledged for the repayment of the bonds and other public securities.

Response: The department agrees that the suggested change will clarify the revenue source that will be used to repay the bonds and other public securities, §15.170 is revised as suggested.

Comment: FSC asked for a revision to the definition of "Bond" in §15.171 by relocating the phrase, "payable from" so that the definition would be more understandable by the investment banking industry. The definition would read, "public security issued by the State of Texas under the authority of Transportation Code, §222.003, for improvements to the state highway system and secured by a pledge of and payable from revenue deposited to the credit of the state highway fund."

Response: The department agrees that the suggested change would make this section more easily understood, and §15.171 is revised as suggested.

Comment: Comments were received from Zachry Construction Company. Regarding §15.173, Zachry requests that the department ensure that the language in this section allows the department the flexibility to allocate bond proceeds to projects utilizing alternative design concepts and that the department have the flexibility to apply bond revenues to projects developed under comprehensive development agreements using alternative design concepts, if deemed by the department to be in the best interest of the state and the traveling public.

Response: Section 15.173(b) provides that the department will consider one or more of certain criteria, including adherence to accepted department design standards, in selecting projects for funding under that section. Section 15.173(b) does not prevent the funding of projects, in appropriate circumstances, using alternative design standards and design exceptions approved by the department. No changes are necessary.

Comment: Comments were received from the City of College Station. They identified several safety projects in College Station that they would like to see funded.

Response: The selection of projects to be funded under §15.174 will occur after the adoption of these rules, and accordingly is outside the scope of this rulemaking.

Comment: The City of College Station requested that the rules specifically allow local jurisdictions to submit safety related projects for consideration by the department.

Response: Because the bond proceeds can only be used on state highway system roadways, the department has the capability to identify needs both inside and outside of cities and develop necessary projects. Furthermore, some potential safety projects may be included in the backlog of projects contained in the department's Unified Transportation Program (UTP). The UTP is developed in conjunction with local jurisdictions and local needs are thoroughly considered through the metropolitan planning process. No change will be made.

Comment: The City of College Station suggested that the rules address the urgency of committing the safety fund portion of the $3 billion bond authorization as soon as possible.

Response: The department agrees that safety represents a critical component of the agency's mission. Although safety construction is only one category of the department's construction program, the department would like to note that all transportation construction has a positive impact on the safety of the traveling public, even if not specifically labeled as "safety construction." Transportation Code, §222.003, requires the commission to prescribe criteria for selecting projects eligible for funding. The timing of funding specific categories of eligible projects is outside this rulemaking. No change will be made.

STATUTORY AUTHORITY: The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.003, which requires the commission to establish by rule the criteria for selecting projects eligible for funding under that section.

CROSS REFERENCE TO STATUTE: Transportation Code, §222.003.

§15.170. Purpose.

Transportation Code, §222.003, allows the Texas Transportation Commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund. Proceeds from the sale of these bonds and other public securities must be used to fund state highway improvement projects. A maximum of $1 billion per year in debt may be issued not to exceed an aggregate principal amount of $3 billion. This subchapter prescribes the policies and procedures that will be used to select projects.

§15.171. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Accident data--Information detailing the number of motor vehicle traffic accidents or casualties at or on a particular highway location, segment of highway, or type of highway.

(2) Bond--A public security issued by the State of Texas under the authority of Transportation Code, §222.003, for improvements to the state highway system and secured by a pledge of and payable from revenue deposited to the credit of the state highway fund.

(3) Commission--The Texas Transportation Commission.

(4) Department--The Texas Department of Transportation.

(5) Executive Director--The executive director of the department or the director's designee.

(6) Grade crossing--The intersection of a railroad and a public roadway.

(7) Grade separation--A structure that separates two highways, a highway and a railroad line, a highway and a county road, or a highway and a city street.

(8) Hazard Elimination Program--A federal construction program mandated under 23 U.S.C. §152 to reduce the number and severity of traffic accidents.

(9) Hazardous location--A location on the state highway system that requires improvement in order to increase safety at a location, as determined by the department through accident data analysis or engineering judgment.

(10) Highway--A public road, including right of way and all appurtenances, that is on the designated state highway system.

(11) Narrow two-lane highway--A two lane road on the state highway system with a width of less than 24 feet, including any paved shoulder.

(12) Pavement geometry--The vertical, horizontal and pavement structure design elements of a highway or bridge feature.

(13) Safety appurtenance--Highway safety features such as breakaway sign supports, breakaway utility poles, traffic barriers, impact attenuators, traversable terrain, and hardware features such as drainage inlets, barriers, and other safety related fixtures.

(14) Safety project--A project that reduces accidents or corrects or improves a hazardous location.

(15) State highway system--The system of highways in the state included in a comprehensive plan prepared by the executive director with the approval of the commission, in accordance with Transportation Code, §201.103.

(16) State highway improvement project--Improvement projects designed to improve mobility, reduce congestion, or make other needed upgrades to the state highway system.

(17) Trans-Texas Corridor--The statewide system of multimodal facilities under the jurisdiction of the department that is designated by the commission under Transportation Code, Chapter 227.

(18) Texas Highway Trunk System--A planned rural network of four or more lane divided roadways that will serve as a principal connector for Texas cities of greater than 20,000 population as well as major ports and points of entry.

(19) Unified Transportation Program--The 10-year financial plan of the Texas Department of Transportation outlining project development and construction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2004.

TRD-200402133
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: April 15, 2004
Proposal publication date: January 2, 2004
For further information, please call: (512) 463-8630

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register.* The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Commission on Human Rights

Rule Transfer

House Bill 2933, 78th Legislature, 2003, abolished the Texas Commission on Human Rights and assigned its functions and rules to the Texas Workforce Commission. In order to comply with that bill, the *Texas Register* is transferring *Texas Administrative Code,* Title 40, Part 11, Chapters 321, 323, 325, 327, 329, 331, and 333 - 348 to Title 40, Part 20, Chapter 819, Subchapters A - V. The rule transfer took effect March 1, 2004. Please refer to Figure: 40 TAC Chapter 819 to see the complete conversion chart.

TRD-200402113

Effective date: March 1, 2004

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Texas Workforce Commission

Rule Transfer

House Bill 2933, 78th Legislature, 2003, abolished the Texas Commission on Human Rights and assigned its functions and rules to the Texas Workforce Commission. In order to comply with that bill, the *Texas Register* is transferring *Texas Administrative Code,* Title 40, Part 11, Chapters 321, 323, 325, 327, 329, 331, and 333 - 348 to Title 40, Part 20, Chapter 819, Subchapters A - V. The rule transfer took effect March 1, 2004. Please refer to Figure: 40 TAC Chapter 819 to see the complete conversion chart.

Figure: 40 TAC Chapter 819

Current Rules from Title 40, Part 11, Texas Commission on Human Rights Chapters 321, 323, 325, 327, 329, 331, and 333 - 348			Transferred to Title 40, Part 20, Texas Workforce Commission New Chapter 819, Texas Workforce Commission Civil Rights Division.		
Chapter	*Section*	*Heading and Title*	*Subchapters*	*Section*	*Heading and Title*
Chapter 321		General Provisions	Subchapter A		General Provisions
	§321.1	Definitions		§819.1	Definitions
	§321.2	Purpose		§819.2	Purpose
	§321.3	General Construction		§819.3	General Construction
	§321.4	Authority		§819.4	Authority
	§321.5	Severability		§819.5	Severability
	§321.6	Availability		§819.6	Availability
Chapter 323		Commission	Subchapter B		Commission
	§323.1	General Description		§819.11	General Description
	§323.2	Term of Office		§819.12	Term of Office
	§323.3	Meetings		§819.13	Meetings
	§323.4	Reimbursements		§819.14	Reimbursements
	§323.5	General Powers		§819.15	General Powers
	§323.6	Civilian Workforce Composition		§819.16	Civilian Workforce Composition
	§323.7	Review		§819.17	Review
	§323.8	Merit Assessment		§819.18	Merit Assessment
	§323.9	Compliance Training for State Agencies		§819.19	Compliance Training for State Agencies
	§323.10	Employee Training and Education		§819.20	Employee Training and Education
	§323.11	Historically Underutilized Business Program		§819.21	Historically Underutilized Business Program
Chapter 325		Local Commissions	Subchapter C		Local Commissions
	§325.1	Deferral Authority		§819.51	Deferral Authority
	§325.2	Deferral Procedures		§819.52	Deferral Procedures
	§325.3	Final Determination of a Local Commission		§819.53	Final Determination of a Local Commission
	§325.4	Cooperative Agreements		§819.54	Cooperative Agreements
	§325.5	Eligibility		§819.55	Eligibility
Chapter 327		Administrative Review	Subchapter D		Administrative Review
Subchapter A	§327.1	Filing a Complaint		§819.71	Filing a Complaint
	§327.2	Investigation of a Complaint		§819.72	Investigation of a Complaint
	§327.3	Subpoena		§819.73	Subpoena
	§327.4	Dismissal of Complaint		§819.74	Dismissal of Complaint
	§327.5	Reasonable Cause Determination		§819.75	Reasonable Cause Determination
	§327.6	Conciliation		§819.76	Conciliation
	§327.7	Notice to Complainant		§819.77	Notice to Complainant
	§327.8	Failure to Issue Notice		§819.78	Failure to Issue Notice
	§327.9	Access to Commission Records		§819.79	Access to Commission Records
	§327.10	Confidentiality		§819.80	Confidentiality
	§327.11	Disposal of Files and Related Documents		§819.81	Disposal of Files and Related Documents
	§327.12	Temporary Injunctive Relief		§819.82	Temporary Injunctive Relief
	§327.13	Legal Representation		§819.83	Legal Representation

Subchapter B	§327.21	Policy		§819.84	Policy
	§327.22	Office of Alternative Dispute Resolution		§819.85	Office of Alternative Dispute Resolution
	§327.23	Voluntary Settlement through Alternative Dispute Resolution		§819.86	Voluntary Settlement through Alternative Dispute Resolution
	§327.24	Referral of Pending Complaints for Alternative Dispute Resolution		§819.87	Referral of Pending Complaints for Alternative Dispute Resolution
	§327.25	Notification and Objection		§819.88	Notification and Objection
	§327.26	Appointment of Mediators		§819.89	Appointment of Mediators
	§327.27	Standards and Duties of Mediators		§819.90	Standards and Duties of Mediators
	§327.28	Compensation of Mediators		§819.91	Compensation of Mediators
	§327.29	Conduct and Decorum		§819.92	Conduct and Decorum
	§327.30	Effect of Written Settlement Agreement		§819.93	Effect of Written Settlement Agreement
	§327.31	Confidentiality of Communications during Alternative Dispute Resolution Procedures		§819.94	Confidentiality of Communications during Alternative Dispute Resolution Procedures
Chapter 329		Judicial Action	Subchapter E.		Judicial Action
	§329.1	Enforcement		§819.101	Enforcement
Chapter 331		Reports and Recordkeeping	Subchapter F.		Reports and Recordkeeping
	§331.1	Preservation and Use		§819.111	Preservation and Use
Chapter 333		Conformity	Subchapter G.		Conformity
	§333.1	Conformity		§819.121	Conformity
Chapter 334		Review of Fire Fighter Tests	Subchapter H.		Review of Fire Fighter Tests
	§334.1	Review of Fire Department Tests		§819.131	Review of Fire Department Tests
Chapter 335		General Provisions	Subchapter I.		General Provisions
	§335.1	Definitions		§819.151	Definitions
	§335.2	Purpose		§819.152	Purpose
	§335.3	General Construction		§819.153	General Construction
	§335.4	Authority		§819.154	Authority
	§335.5	Severability		§819.155	Severability
	§335.6	Availability		§819.156	Availability
	§335.7	Scope		§819.157	Scope
Chapter 336		Commission	Subchapter J.		Commission
	§336.1	Powers of the Commission		§819.161	Powers of the Commission
Chapter 337		Referral to Municipalities	Subchapter K.		Referral to Municipalities
	§337.1	Referral Authority		§819.171	Referral Authority
	§337.2	Eligibility		§819.172	Eligibility
	§337.3	Cooperative Agreements		§819.173	Cooperative Agreements
Chapter 338		Exempted Residential Real Estate-Related Transactions	Subchapter L.		Exempted Residential Real Estate-Related Transactions
	§338.1	Sale or Rental of a Single-Family House by an Owner		§819.181	Sale or Rental of a Single-Family House by an Owner
	§338.2	Sale, Rental, or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not for Profit Institution		§819.182	Sale, Rental, or Occupancy of Dwellings by a Religious Organization, Association, or Society, or a Not for Profit Institution
	§338.3	Housing Owned or Operated by a Private Club		§819.183	Housing Owned or Operated by a Private Club

	§338.4	Local or State Restrictions on Maximum Number of Occupants of a Dwelling		§819.184	Local or State Restrictions on Maximum Number of Occupants of a Dwelling
	§338.5	Appraisals of Real Property		§819.185	Appraisals of Real Property
	§338.6	Familial Status		§819.186	Familial Status
	§338.7	Illegal Manufacture or Distribution of a Controlled Substance		§819.187	Illegal Manufacture or Distribution of a Controlled Substance
	§338.8	Health or Safety of Individuals or Damage to Property		§819.188	Health or Safety of Individuals or Damage to Property
Chapter 339		Discriminatory Housing Practices	Subchapter M.		Discriminatory Housing Practices
	§339.1	Real Estate Practices Prohibited		§819.191	Real Estate Practices Prohibited
	§339.2	Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental		§819.192	Unlawful Refusal to Sell or Rent or to Negotiate for the Sale or Rental
	§339.3	Discrimination in Terms, Conditions, and Privileges and in Services and Facilities		§819.193	Discrimination in Terms, Conditions, and Privileges and in Services and Facilities
	§339.4	Other Prohibited Sale and Rental Conduct		§819.194	Other Prohibited Sale and Rental Conduct
	§339.5	Discriminatory Advertisements, Statements, and Notices		§819.195	Discriminatory Advertisements, Statements, and Notices
	§339.6	Discriminatory Representations on the Availability of Dwellings		§819.196	Discriminatory Representations on the Availability of Dwellings
	§339.7	Blockbusting		§819.197	Blockbusting
	§339.8	Discrimination in the Provision of Brokerage Services		§819.198	Discrimination in the Provision of Brokerage Services
	§339.9	Discriminatory Practices in Residential Real-Estate Transactions		§819.199	Discriminatory Practices in Residential Real-Estate Transactions
	§339.10	Discrimination in the Making of Loans and in the Provision of other Financial Assistance		§819.210	Discrimination in the Making of Loans and in the Provision of other Financial Assistance
	§339.11	Discrimination in the Purchasing of Loans		§819.211	Discrimination in the Purchasing of Loans
	§339.12	Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance		§819.212	Discrimination in the Terms and Conditions for Making Available Loans or Other Financial Assistance
	§339.13	Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property		§819.213	Unlawful Practices in the Selling, Brokering, or Appraising of Residential Real Property
	§339.14	General Prohibitions Against Discrimination Because of Disability		§819.214	General Prohibitions Against Discrimination Because of Disability
	§339.15	Reasonable Modifications of Existing Premises		§819.215	Reasonable Modifications of Existing Premises
	§339.16	Reasonable Accommodations		§819.216	Reasonable Accommodations

	§339.17	Design and Construction Requirements		§819.217	Design and Construction Requirements
	§339.18	Prohibited Interference, Coercion, Intimidation, or Retaliation		§819.218	Prohibited Interference, Coercion, Intimidation, or Retaliation
Chapter 340		Administrative Enforcement	Subchapter N.		Administrative Enforcement
	§340.1	Submission of Information To File a Complaint		§819.301	Submission of Information To File a Complaint
	§340.2	Who May File Complaints		§819.302	Who May File Complaints
	§340.3	Persons against Whom Complaints May Be Filed		§819.303	Persons against Whom Complaints May Be Filed
	§340.4	Where To File Complaints		§819.304	Where To File Complaints
	§340.5	Form and Content of a Complaint		§819.305	Form and Content of a Complaint
	§340.6	The Date of Filing of a Complaint		§819.306	The Date of Filing of a Complaint
	§340.7	Amendment of Complaint		§819.307	Amendment of Complaint
	§340.8	Service of Notice on Aggrieved Person		§819.308	Service of Notice on Aggrieved Person
	§340.9	Notification of Respondent and Joinder of Additional or Substitute Respondents		§819.309	Notification of Respondent and Joinder of Additional or Substitute Respondents
	§340.10	Answer to Complaint		§819.310	Answer to Complaint
	§340.11	Investigations		§819.311	Investigations
	§340.12	Systemic Processing		§819.312	Systemic Processing
	§340.13	Conduct of Investigation		§819.313	Conduct of Investigation
	§340.14	Cooperation with Federal Agencies		§819.314	Cooperation with Federal Agencies
	§340.15	Completion of Investigation		§819.315	Completion of Investigation
	§340.16	Final Investigative Report		§819.316	Final Investigative Report
	§340.17	Conciliation Process		§819.317	Conciliation Process
	§340.18	Conciliation Agreement		§819.318	Conciliation Agreement
	§340.19	Relief Sought for Aggrieved Persons during Conciliation		§819.319	Relief Sought for Aggrieved Persons during Conciliation
	§340.20	Conciliation Provisions Relating to Public Interest		§819.320	Conciliation Provisions Relating to Public Interest
	§340.21	Termination of Conciliation Process		§819.321	Termination of Conciliation Process
	§340.22	Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation		§819.322	Prohibitions and Requirements for Disclosure of Information Obtained during Conciliation
	§340.23	Review of Compliance with Conciliation Agreements		§819.323	Review of Compliance with Conciliation Agreements
	§340.24	Reasonable Cause Determination		§819.324	Reasonable Cause Determination
	§340.25	Issuance of Charge		§819.325	Issuance of Charge
	§340.26	Election of Civil Action or Provision of Administrative Hearing Procedure		§819.326	Election of Civil Action or Provision of Administrative Hearing Procedure
	§340.27	Administrative Penalties		§819.327	Administrative Penalties
	§340.28	Effect of Commission Order		§819.328	Effect of Commission Order
Chapter 341		Administrative Hearing Proceedings	Subchapter O.		Administrative Hearing Proceedings
	§341.1	State Office of Administrative Hearings		§819.401	State Office of Administrative Hearings

	§341.2	Proposal for Decision and Hearing Officer's Report		§819.402	Proposal for Decision and Hearing Officer's Report
	§341.3	Countersignature by Executive Director or His or Her Designee		§819.403	Countersignature by Executive Director or His or Her Designee
	§341.4	Filing of Exceptions and Replies		§819.404	Filing of Exceptions and Replies
	§341.5	Form of Exceptions and Replies		§819.405	Form of Exceptions and Replies
	§341.6	Oral Argument before the Commission		§819.406	Oral Argument before the Commission
	§341.7	Pleading before Final Decision		§819.407	Pleading before Final Decision
	§341.8	Final Decision or Order		§819.408	Final Decision or Order
	§341.9	Form, Content, and Service		§819.409	Form, Content, and Service
	§341.10	Effective Date of Decision or Order		§819.410	Effective Date of Decision or Order
	§341.11	Administrative Finality		§819.411	Administrative Finality
	§341.12	Rehearing		§819.412	Rehearing
	§341.13	Emergency Orders		§819.413	Emergency Orders
	§341.14	Show Cause Orders and Complaints		§819.414	Show Cause Orders and Complaints
	§341.15	Ex Parte Communications		§819.415	Ex Parte Communications
	§341.16	Appeals		§819.416	Appeals
Chapter 342		Prompt Judicial Action	Subchapter P.		Prompt Judicial Action
	§342.1	Temporary and Preliminary Relief		§819.421	Temporary and Preliminary Relief
	§342.2	Enforcement by Attorney General		§819.422	Enforcement by Attorney General
	§342.3	Subpoena Enforcement Power		§819.423	Subpoena Enforcement Power
Chapter 343		Enforcement by Private Person	Subchapter Q.		Enforcement by Private Person
	§343.1	Civil Action		§819.431	Civil Action
	§343.2	Court Appointed Attorney		§819.432	Court Appointed Attorney
	§343.3	Relief Granted		§819.433	Relief Granted
	§343.4	Effect of Relief Granted		§819.434	Effect of Relief Granted
	§343.5	Intervention by Attorney General		§819.435	Intervention by Attorney General
Chapter 344		Other Action by the Commission	Subchapter R.		Other Action by the Commission
	§344.1	Licensed or Regulated Businesses		§819.441	Licensed or Regulated Businesses
	§344.2	Order in Preceding Five Years		§819.442	Order in Preceding Five Years
	§344.3	Criminal Penalties		§819.443	Criminal Penalties
Chapter 345		Prevailing Party	Subchapter S.		Prevailing Party
	§345.1	Prevailing Party		§819.451	Prevailing Party
Chapter 346		Fair Housing Fund	Subchapter T.		Fair Housing Fund
	§346.1	Fair Housing Fund		§819.461	Fair Housing Fund
Chapter 347		Statutory Authority	Subchapter U.		Statutory Authority
	§347.1	Statutory Authority		§819.471	Statutory Authority
Chapter 348		Effective Date	Subchapter V.		Effective Date
	§348.1	Effective Date		§819.481	Effective Date

TRD-200402114
Effective date: March 1, 2004

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Texas Department of Protective and Regulatory Services

Notice of Agency Name Change

Through the enactment of House Bill 2292, 78th Legislature, 2003, the Governor and the Legislature have directed Texas health and human services agencies to consolidate organizational structures and functions, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans.

Effective February 1, 2004, the name of the Texas Department of Protective and Regulatory Services has been changed to the Texas Department of Family and Protective Services. As of February 1, 2004, the name of Title 40, Part 19 of the *Texas Administrative Code* is the Texas Department of Family and Protective Services, but the rule numbers and names under the part will remain the same.

TRD-200402106
Effective date: February 1, 2004

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Texas Department of Family and Protective Services

Notice of Agency Name Change

Through the enactment of House Bill 2292, 78th Legislature, 2003, the Governor and the Legislature have directed Texas health and human services agencies to consolidate organizational structures and functions, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans.

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TRD-200402107
Effective date: February 1, 2004

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

NOTICE OF AVAILABILITY OF LIABILITY INSURANCE PURSUANT TO INSURANCE CODE ARTICLE 21.49-3, §3B, TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION ACT

Notice is hereby given pursuant to Insurance Code, Article 21.49-3, §3B, that the Commissioner will consider a petition by the staff of the Texas Department of Insurance proposing that the Commissioner (1) determine that appropriate liability insurance coverage written by insurers authorized to engage in business in this state is not reasonably available to the following types of health care practitioners and health care facilities: perfusionists; ambulatory surgery centers (surgicenters); (2) designate by order that perfusionists and surgicenters be included as health care providers eligible to receive coverage under Article 21.49-3, §3B(b), and (3) order that perfusionists and surgicenters be included under the policyholder's stabilization reserve fund established under Article 21.49-3, §4A.

Pursuant to Insurance Code, Article 21.49-3, §3B, after notice and opportunity for hearing, the commissioner may (1) determine that appropriate liability insurance coverage written by insurers authorized to engage in business in this state is not reasonably available to a type of health care practitioner or health care facility; and (2) by order designate that type of health care practitioner or health care facility to be included as a health care provider eligible to receive coverage under Article 21.49-3, §3B. The Commissioner's order may indicate whether a health care practitioner or health care facility designated by the Commissioner under Insurance Code, Article 21.49-3 will be included under the policyholder's stabilization reserve fund established under Article 21.49-3 §4A or 4B or under a separately created policyholder's stabilization reserve fund.

Copies of the full text of the staff petition are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327, refer to (Reference No. P-0304-03-I).

Any interested person may request the Commissioner to hold a hearing before it acts on staff's pending petition. A public hearing on this matter will not be held unless a separate written request for a hearing is submitted to the Office to the Chief Clerk within 30 days after publication of this notice in the *Texas Register*.

Comments or a request for a hearing may be submitted in writing within 30 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment or request for a hearing should be submitted simultaneously to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Mail Code 104-PC, P.O. Box 149104, Austin, Texas, 78714-9104.

TRD-200402187
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 29, 2004

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Executive Council of Physical Therapy and Occupational Therapy Examiners

Title 22, Part 28

TRD-200402115
Filed: March 24, 2004

♦ ♦ ♦

Proposed Rule Reviews

Texas State Board of Examiners of Dietitians

Title 22, Part 31

The Texas State Board of Examiners of Dietitians will review and consider for readoption, revision, or repeal Texas Administrative Code, Title 22, Examining Boards, Part 31, Texas State Board of Examiners of Dietitians, Chapter 711, §§711.1 - 711.22.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200402126
Patricia Mayers Krug
Chair
Texas State Board of Examiners of Dietitians
Filed: March 25, 2004

♦ ♦ ♦

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1, Texas Department of Health, Chapter 229, Food and Drug, Subchapter U, Permitting Retail Food Establishments, §§229.270 - 229.274.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200402163
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 29, 2004

♦ ♦ ♦

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1, Texas Department of Health, Chapter 229, Food and Drug, Subchapter V, Minimum Standards for Licensure of Tattoo and Certain Body Piercing Studios, §§229.401 - 229.412.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health,

1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200402127
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 25, 2004

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Executive Council of Physical Therapy and Occupational Therapy Examiners

Title 22, Part 28

The Executive Council of Physical Therapy and Occupational Therapy Examiners files this notice of intent to review the rules as listed below, pursuant to Texas Government Code §2001.039 (Administrative Procedure Act).

The council's reasons for adopting the rules in this chapter continue to exist, and it proposes to readopt them all. Any rule amendments determined to be necessary during the review will be formally proposed at a subsequent board meeting, and will not be submitted simultaneously with the notice of readoption.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to John Maline, Executive Director, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, jmaline@mail.capnet.state.tx.us.

§651.1. Occupational Therapy Board Fees.

§651.2. Physical Therapy Board Fees.

§651.3. Administrative Services Fees.

TRD-200402136
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Filed: March 26, 2004

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Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 5, Finance; Chapter 15, Transportation Planning and Programming; and Chapter 27, Toll Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

On March 25, 2004, the department adopted revisions to the following sections of chapters in this proposed rule review. These revised sections can be found on the department's web site at: http://www.dot.state.tx.us/ogc/rules.htm and are included in the Adopted Rules section of this issue of the *Texas Register*.

New Subchapter E, §§5.51 - 5.59, Pass-Through Tolls

New Subchapter N, §§15.170 - 15.174, State Highway Projects Financed Through the Issuance of Bonds and Other Public Securities

In the March 5, 2004, issue of the *Texas Register* (29 TexReg 2286), the department proposed revisions due to legislation to the following sections of chapters in this proposed rule review: Amendments to §15.150 and §15.151, and new §15.154 and §15.155, concerning rail facilities.

Comment or questions regarding this rule review may be submitted in writing to Bob Jackson, Deputy General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200402134
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 26, 2004

♦ ♦ ♦

Texas Workforce Investment Council

Title 40, Part 22

The Texas Workforce Investment Council (Council) proposes to review and consider for readoption Title 40, Texas Administrative Code, Part 22, Chapter 901 regarding designation and redesignation of local workforce development areas. Texas Government Code, Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

The Council is accepting comments regarding whether the reason for adopting or readopting each of these rules continues to exist. Comments will be accepted for 30 days following publication of this notice in the *Texas Register*. Questions or written comments should be directed to Cheryl Fuller, Director, Texas Workforce Investment Council, P.O. BOX 2241, Austin, Texas, 78768; or by fax 512-936-8118.

TRD-200402167
Cheryl Fuller
Director
Texas Workforce Investment Council
Filed: March 29, 2004

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Adopted Rule Reviews

Texas Building and Procurement Commission

Title 1, Part 5

In accordance with the rule review plan filed September 13, 2000, and published in the September 29, 2000, issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) readopts with amendments Chapter 122, §§122.1-122.3, Application for State-Leased or Owned Facilities and Space Allocation, as published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 10977).

Chapter 122 regulates the Commission facilities planning program. Subchapter A sets forth the applicable definitions and the procedures for making requests for allocation, relinquishment, or modification of space in state-leased or owned facilities. Subchapter B details the calculation of space allocation ratio, exemptions from the space allocation ratio, and the procedure for submitting applications for variances.

As part of this review process but in a separate proposal, the Commission has adopted amendments to Chapter 122, Subchapter A, §122.1

and Subchapter B, §122.3 published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2295). Proposed amendments to §122.2 were published in the March 5, 2004, issue of the *Texas Register* (29 TexReg 2138) and will be acted upon at the April Commission meeting.

The Commission conducted a review and determined that the reasons for the rules in Chapter 122 continue to exist. The rules are needed to provide the public with information on procedures for facilities planning.

The public comment period closed January 5, 2004. No comments were received on the rule review.

This concludes the review of Chapter 122, §122.1-122.3.

TRD-200402188
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: March 29, 2004

♦ ♦ ♦

Texas Motor Vehicle Board

Title 16, Part 6

Pursuant to the notice of proposed rule review published in the February 6, 2004, issue of the *Texas Register* (29 TexReg 1232), and in accordance with the review plan filed January 22, 2004 and Texas Government Code, §2001.039, the Texas Motor Vehicle Board adopts the review of 16 TAC Part 6, Chapter 101, Practice and Procedure; Chapter 103, General Rules; Chapter 105, Advertising; Chapter 107, Warranty Performance Obligations; Chapter 109, Lessors and Lease Facilitators; and Chapter 111, General Distinguishing Numbers.

No comments were received regarding adoption of the review.

No amendments were proposed as a result of the review. Section 107.6 had amendments pending, which were adopted at the Board's March 25, 2004 meeting. New §103.2 was also adopted at the meeting.

The Board finds that the reasons for adoption of these chapters continue to exist. This concludes the review of 16 TAC Part 6, Chapters 101, 103, 105, 107, 109 and 111.

The Board is authorized to readopt Chapters 101, 103, 105, 107, 109 and 111 by Texas Occupations Code §2301.155, which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the Code and to govern practice and procedure before the agency.

TRD-200402147
Brett Bray
Director
Texas Motor Vehicle Board
Filed: March 26, 2004

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §3.9300

MEMORANDUM OF UNDERSTANDING
COORDINATION OF DRUG LAW ENFORCEMENT EFFORTS

This Memorandum of Understanding is entered into by the Texas Department of Public Safety (DPS) and the Office of the Governor, Criminal Justice Division (CJD).

PURPOSE

Pursuant to Section 411.0096, Texas Government Code, the Texas Department of Public Safety and the Office of the Governor, Criminal Justice Division hereby adopt a joint memorandum of understanding on coordinating the drug law enforcement efforts of DPS and CJD.

DRUG POLICY

DPS will provide CJD with a copy of the State Drug Law Enforcement Strategy, which sets forth DPS planning efforts to address the drug threat in Texas. Additionally, CJD will be provided a copy of the annual Drug Threat Assessment, which will be produced jointly by DPS and the Texas National Guard Counterdrug Program.

At the Governor's request, DPS will provide representation on any advisory board advising the governor about drug policy.

DRUG TASK FORCES

CJD has requested that DPS assume command and control of all Byrne-funded narcotics task forces.

It shall be the role of CJD to administer and monitor all grants to drug task forces to ensure state and federal fiscal and programmatic compliance. CJD will be responsible for reviewing drug task force grant applications and rendering final funding decisions. When rendering final funding decisions, CJD will consider the recommendations of DPS regarding each drug task force's compliance with established policies and procedures, state and federal requirements, and the drug task force's integration into the State Drug Law Enforcement Strategy.

It shall be the role of DPS to exercise command and control of all drug task forces through DPS chain of command and to ensure compliance with uniform operational policies and procedures. DPS, with the concurrence of CJD, will develop uniform policies and procedures for all drug task forces funded by the state. DPS will ensure that drug task forces are integrated into the local, regional, and statewide drug enforcement strategy.

DPS will evaluate each drug task force at least quarterly with respect to the drug task force's compliance with established policies and procedures, and state and federal requirements. DPS will provide the written evaluation to the project director, financial officer, authorized

official, and commander of the drug task force, and the chairman of the multi-jurisdictional task force advisory board. DPS will provide a copy of the written evaluation to the Executive Director of CJD.

If DPS determines that a drug task force has failed to comply with established policies and procedures, or state or federal requirements, DPS will notify in writing the project director, financial officer, authorized official, and commander of the drug task force, and the chairman of the multi-jurisdictional task force advisory board, of any noncompliance identified by DPS. DPS will provide a copy of the written notice to the Executive Director of CJD.

All drug task force personnel remain the employees of their assigning law enforcement agencies. Under no circumstances should drug task force personnel be considered employees of the drug task force, DPS, CJD, or the multi-jurisdictional task force advisory board.

CJD and DPS shall exchange information in a timely manner to enable CJD and DPS to comply with state and federal reporting requirements and to assess the effectiveness of each drug task force funded by the state.

AMENDMENT

This memorandum of understanding may be amended, as necessary, by subsequent written agreement adopted by rule.

APPROVED BY:

Texas Department of Public Safety

By:
Name: Tommy A. Davis Jr.
Title: Director

Office of the Governor,
Criminal Justice Division

By:
Name: Ken C. Nicolas
Title: Executive Director

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-2	Commercial Facility Bond Form	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
PR	Monthly Production Report	02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission's form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling / Measurement Application Supplement	6/97	3.26, 3.27

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99 T-4A: 4/99 T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	07/01/04	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-1X	Application for Future Re-Entry of Inactive Wellbore and Extension Permit	14(b)(2) 10/03	3.14, 3.78
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	Notification of Regulated Waste Activity (not an RRC form but required)	12/99	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)

Figure: 43 TAC §21.723(b)(1)

Form 2113 (9/2003)
(Replaces RRC Form CSC1)
(GSD-EPC)
Page 1 of 1

APPLICATION FOR CESSATION OF OPERATIONS

For TxDOT Use Only: Not to be filled out by applicant

Application Number: _____ Date Filed: _____

Pit Number: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For inquiries call 512-463-8585.

I. Quarry/Pit Safety Certificate Number: _____

II. Name and address of responsible party who plans or intends to cease active operations:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III. Date the quarry/pit will cease active operations (month/day/year): _____

IV. Has the responsible party attached any additional plans determined necessary to protect the public good and welfare after the cessation of operations?

☐ YES ☐ NO

_____ _____

Signature of Responsible Party Date

Figure: 43 TAC §21.723(b)(2)

Texas Department of Transportation
Form 2114 (9/2003)
(Replaces RRC Form SC1)
(GSD-EPC)
Page 1 of 4

APPLICATION FOR QUARRY AND PIT SAFETY CERTIFICATE

For TxDOT Use Only: Not to be filled out by applicant

Application Number: _____ Date Filed: _____

Pit Number: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For inquiries call 512-463-8585.

I. Person responsible for quarry or pit:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

II. Owner of pit (if different than person responsible for pit):

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III. Quarry/Pit Address: _____

_____

_____

_____ _____

Signature of Responsible Party Date

IV. Common Name for Quarry/Pit: _____
(e.g., Jones #5)

V. County(ies) where Quarry/Pit is Located: _____

VI. Commodity mined at quarry or pit: ☐ Sand/Gravel ☐ Stone ☐ Caliche ☐ Gypsum ☐ Other _____ (Specify)

VII. Depth in feet of the deepest excavation from the edge of the pit highwall within 200 feet of the public roadway edge: Feet: _____

VIII. Is Quarry/Pit: Active ☐ Inactive ☐

IX. Month/Year mining or quarrying ceased: (if applicable) Month _____ Year _____

X. Provide a brief description of the quarry or pit site, including the acreage outside and inside the pit. The description shall include the quarry/pit location marked on either USGS 7-1/2 minute map, USGS 15 minute map, or Texas Department of Transportation 1/2 scale county map.

XI. Provide a detailed description of and a construction plan for the barrier or other device to be constructed in accordance with the Regulations and the Act. The barrier must meet the regulation Barrier Construction Standards (Section 11.1034). The construction plan shall include an accurate map drawing or aerial photograph (scale no greater than 1"=100') of the quarry/pit site indicating the following features: public road right of way lines, intersections of public or private roads or driveways, quarry/pit location and barrier location, and any other information or condition that in the opinion of the operator or owner constitutes an unacceptable unsafe location. The drawing shall include a north arrow and bar scale. (Attach additional sheets and/or construction plans as necessary.)

XII. Quarry Safety Plan: Applications for safety certificates for new pits in hazardous proximity to a public road opened from and after November 1, 1991, must provide the following additional information:

A statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to the public road.

Figure: 43 TAC §21.723(b)(3)

Texas Department of Transportation

Form 2115 (9/2003)
(Replaces RRC Form TSC1)
(GSD-EPC)
Page 1 of 3

APPLICATION FOR TRANSFER OF QUARRY AND PIT SAFETY CERTIFICATE

For TxDOT Use Only: Not to be filled out by applicant

Application Number: _____ Date Filed: _____

Pit Number: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For inquiries call 512-463-8585.

I. Quarry/Pit Safety Certificate Number: _____

II. Person responsible for quarry or pit:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III. Owner of pit (if different than person responsible for pit):

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

IV. Date transfer of title or operation of the quarry or pit occurs (month/day/year): _____

V. The new owner, operator, lessor or lessee, or party in interest must execute the transfer affidavit.

TRANSFER AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day appeared _____ (new owner, operator, lessor or lessee, or party in interest), and stated on oath as follows:

1. My name is _____ (name of person executing affidavit). I am acting as _____ (state capacity in which affidavit is acting, if as an individual, state so). The mailing address of _____ (new owner, operator, lessor or lessee, or party in interest) is _____ (street or P.O. Box) _____ (City) (State) (Zip).

2. Pursuant to an agreement dated _____ (month, day, year) with _____ (previous owner, operator, lessor or lessee, or party in interest) to transfer the title to the site covered by Quarry/Pit Safety Certificate Number _____, _____ (new owner, operator, lessor or lessee, or party in interest) will continue operations at the site covered by the Safety Certificate.

3. I have been authorized by _____ (new owner, operator, lessor or lessee, or party in interest) to execute this affidavit in compliance with the terms of Tex. Nat. Res. Code Ann. §133.051.

4. I certify that all barriers between the pit and the nearest public roadway comply with the Texas Aggregate Quarry and Pit Safety Act and the rules and orders adopted by the Texas Department of Transportation.

5. I further certify that there will be no change, on or after the day of transfer of title or operation, in: a) the condition or location of a barrier; and b) the distance of a pit perimeter from the nearest public roadway or public or private intersection of a public road or driveway that adjoins the site.

_____
(signature of affiant)

_____
(typed name of affiant; affiant's capacity if not acting as an individual)

_____
(new owner, operator, lessor or lessee, or party in interest)

SUBSCRIBED AND SWORN TO before me on _____ , _____
(month, day) (year)

_____
(signature of notary)

Notary Public in and for
the State of Texas

My Commission Expires:

_____ , _____
(month, day) (year)

Affix Notary Seal Above

Figure: 43 TAC §21.723(b)(4)

Texas Department of Transportation

Form 2116 (9/2003)
(Replaces RRC Form WSC1)
(GSD-EPC)
Page 1 of 3

APPLICATION FOR WAIVER OF QUARRY AND PIT SAFETY CERTIFICATE

For TxDOT Use Only: Not to be filled out by applicant

Application Number: _____ Date Filed: _____

Pit Number: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect. For inquiries call 512-463-8585.

I Person responsible for quarry or pit:

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

II Owner of pit (if different than person responsible for pit):

Name: _____

Address (Street): _____

City: _____ State: _____

Zip: _____ Telephone Number: _____

III Quarry/Pit Address: _____

_____

_____

_____

IV. Common Name for Quarry/Pit:
(e.g., Jones #5) _____

V. County(ies) where Quarry/Pit is Located: _____

VI. Commodity mined at quarry or pit:
(Check the one most appropriate)

- ☐ Sand/Gravel
- ☐ Caliche
- ☐ Clay
- ☐ Stone
- ☐ Gypsum
- ☐ Other _____ (Specify)

VII. Depth in feet of the deepest excavation from the edge of the pit highwall within 200 feet of the public roadway edge: Feet: _____

VIII. Month/Year mining or quarrying ceased:
(if applicable) Month _____ Year _____

IX. Name of governmental agency (city, county, state) obtaining right of way: _____

Date the agency obtained the right of way: _____

X. Has the quarry or pit remained inactive or abandoned since the public road was constructed?
☐ Yes ☐ No

XI. Provide a brief description of the quarry or pit site, including the acreage outside and inside the pit. The description shall include the quarry/pit location marked on either USGS 7-1/2 minute map, USGS 15 minute map, or Texas Department of Transportation 1/2 scale county map.

XII. I certify that the information contained in this Application for Waiver of Quarry and Pit Safety Certificate is true and correct.

_____
(signature of affiant)

_____
(typed name of affiant; affiant's capacity if not acting as an individual)

SUBSCRIBED AND SWORN TO before me on _____ (month, day), _____ (year)

_____
(signature of notary)

Notary Public in and for
the State of Texas

My Commission Expires:

_____ (month, day), _____ (year)

Affix Notary Seal Above

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Amendments to Request for Proposals: Texas-Israel Exchange Fund Program

The Texas Department of Agriculture (the department) hereby provides notice of amendments to its Request for Proposals for the Texas-Israel Exchange Fund Program published in the In Addition Section of the *Texas Register* on March 5, 2004 (29 TexReg 2423). The department is extending the submission deadlines for proposals and changing the funding limitations as follows:

Submission Dates/Locations.

May 1: The title page, including the names of all participants, full address details of all participants and the complete abstract are to be submitted electronically (via the on-line submission form on the BARD and TDA/TIE websites - www.bard-isus.com and www.agr.state.tx.us/iga/grants_funding/index.htm).

May 15: Twelve hard copies and one electronic copy of the proposal copy in PDF format (either by diskette or CD Rom) must arrive not later than 5:00 p.m. on May 15 to each of the following: Texas Department of Agriculture, Attn: Carol Funderburgh, P.O. Box 12847, Austin, Texas 78711 or physical address of 1700 North Congress, 11th Floor, Austin, Texas 78701; and the main BARD office, Agricultural Center, P.O. Box 6, Bet Dagan, 50250, Israel - physical address is: Room 412, Old Administration Building, Volcani Center, HaKirya Ha-Haklait, Derech Hamakabim, Rishon LeZion, Israel.

The signature page may be submitted separately from the proposal, but one copy must arrive at each of the TIE and BARD offices not later than 5:00 p.m. on **June 1.**

No additions or amendments to the proposal will be accepted after 5:00 p.m. on **May 15.**

Funding Limitations.

Each project is limited to a maximum award of **$100,000** (**$50,000** from TIE and **$50,000** from BARD) per year, not to exceed a duration of three years and a maximum amount of **$300,000** (**$150,000** from TIE and **$150,000** from BARD) for the three-year period. Grants are awarded for a one-year period of time with any subsequent funding for multi-year projects contingent upon documentation of achieved objectives and adherence to grant guidelines, reporting requirements and the availability of funds.

All other terms and requirements of the Request for Proposals remain the same as published on March 5, 2004.

Any questions regarding these changes may be directed to Carol Funderburgh, P.O. Box 12847, Austin, Texas 78711 or physical address of 1700 North Congress, 11th Floor, Austin, Texas 78701, ph. 512/463-8536.

TRD-200402200
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: March 31, 2004

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 19, 2004, through March 24, 2004. The public comment period for these projects will close at 5:00 p.m. on April 30, 2004.

FEDERAL AGENCY ACTIONS:

Applicant: Victoria County Navigation District; Location: The project is located at the west side of the Port of Victoria Turning Basin, approximately 9 miles south of Victoria, Victoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: BLOOMINGTON, Texas. Approximate NAD27 UTM Coordinates: Zone 14; Easting: 698,006; Northing: 3,175,261. Project Description: The applicant proposes to widen the barge mooring area on the west side of the Victoria Barge Canal at the Port of Victoria Turning Basin to a width of 50 feet, a length of 900 feet and a depth of 14 feet, and to construct a dock with steel piles 720 feet long by 50 feet wide. The amount of material to be hydraulically dredged is 20,000 cubic yards, to be placed in Corps of Engineers Placement Area No. 13. The slope will be stabilized with geotextile blanket and articulated concrete mats. The work is to be performed in order to improve the dock facilities at the Turning Basin to handle agricultural grain products. CCC Project No.: 04-0056-F1; Type of Application: U.S.A.C.E. permit application #23261 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387).

Applicant: Lyman Reed Location: The project is located between Moses Lake and Galveston Bay, on Skyline Drive, at the Tide Control Gate, in Texas City, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Marque, Texas. Approximate UTM Coordinates: Zone 15; Easting: 314000; Northing: 3257000. Project Description: The applicant proposes to amend Permit No. 13037 (08). The original permit, issued on June 20, 1979, authorized the construction of a marina and residential subdivision. Amendment (01) authorized the placement of material and the construction of bulkheads for erosion control. It also authorized the dredging of three additional channels and the narrowing of a previously authorized channel from 100 feet to 90 feet. This amendment also provided for the option of not bulkheading portions of the channels and extended the

time for completing the authorized work. Amendment (03) extended the time to complete the authorized work and provided authorization to construct two additional canals. Amendment (04) extended the time to complete the authorized work, and also authorized the deletion of a designated area of the project site to avoid impacts to two existing cultural resource sites. Amendment (05) extended the time to complete the authorized work. Amendment (06) authorized a reduction in the scope of the project and a modification to the marina. This amendment also extended the time to complete the authorized work. Amendment (07) extended the time to complete the authorized work. Amendment (08) deleted Channel F and Borrow Pit Number 3, changed the configuration of the marina, added an option to relocate the 7-acre mitigation area to an adjacent property, added Borrow Pit Number 2 as an expansion area for the marina, and extended time to complete work until December 31, 2005. In a letter dated September 25, 2001, the applicant was authorized for the relocation of roads and culverts, and a minor change in the shape, but not size, of the previously authorized mitigation area. In this proposed amendment, the applicant is requesting to: 1. Modify the marina entry by deleting the conventional pier/finger pier type marina on the southern side of Borrow Pit Number 1 and replace it with townhouse pods and individual boat piers. 2. Relocate the 7-acre mitigation area back to the location between the edges of the existing undisturbed wetlands and the toe of the 50-foot wide greenbelt along the southern edge of the development. 3. Shorten channels B, C, and D to allow the Highbourne Cay residential finger to be adjacent to and within Borrow Pit Number 2. This will add 21 private residences and boats slips, half of which will be located within Borrow Pit Number 2. The proposed pier and boat slip structures associated with these residences will be added to the Residential Pier Examples (pages 29a, 29b). 4. Increase the collecting channel's width to have a fairway exceeding 50 feet. 5. Extend the permit time to complete the project. To date, no construction has been started. CCC Project No.: 04-0080-F1; Type of Application: U.S.A.C.E. permit application #13037(09) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Ross Novelli, Jr.; Location: The project is located in wetlands and shallow open water on the west end of Galveston Island, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Sea Isle, Texas. Approximate UTM Coordinates: Zone 15; Easting: 302340; Northing: 3226003. Project Description: The applicant proposes to dredge a boat access channel and excavate a channel for a waterfront subdivision. The proposed development includes 164 residential lots and water access channels. One main channel will be dredged to provide access to West Galveston Bay. A total of 38,500 cubic yards of material will be hydraulically dredged for the main access channel. An existing natural channel will be connected to the proposed development to increase water circulation and smaller circulation ditches will be constructed through the subdivision. The excavation will impact 5.10 acres of jurisdictional wetlands and an additional 1.44 acres of jurisdictional waters. To offset project impacts the applicant proposes to construct 10.0 acres of intertidal wetlands utilizing the dredged material just north of the proposed development. Berms will be constructed to contain the material. In addition, the applicant proposes to set aside 24.46 acres as an open space reserve. CCC Project No.: 04-0101-F1; Type of Application: U.S.A.C.E. permit application #22607(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A §1251-1387). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200402195
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 31, 2004

♦ ♦ ♦

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2004

The 1% local sales and use tax will become effective April 1, 2004 in the cities listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Bunker Hill Village (Harris Co)	2101286	.010000	.082500
Volente (Travis Co)	2227212	.010000	.082500

An additional 1/8% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Keller (Tarrant Co)	2220111	.016250	.082500

An additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Reno (Parker Co)	2184062	.012500	.080000
Reno (Tarrant Co)	2184062	.012500	.075000

An additional 1/4% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Yorktown (Dewitt Co)	2062014	.012500	.075000

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective April 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Celina (Collin Co)	2043090	.020000	.082500
Celina (Denton Co)	2043090	.020000	.082500

The 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** was abolished effective April 1, 2004 in the city listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Murchison (Henderson Co)	2107119	.010000	.072500

The additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be reduced to 1/4% and an additional 1/4% sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2004 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Ranger (Eastland Co)	2067028	.020000	.082500

The additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will be reduced to 3/8%. The additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will be reduced to 3/8% and an additional 1/4% sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2004 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Prairie View (Waller Co)	2237041	.020000	.082500

The 1/2% Fort Worth MTA tax has been repealed and will be abolished effective April 1, 2004 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Lake Worth (Tarrant Co)	2220040	.015000	.077500

A 1% special purpose district sales and use tax will become effective April 1, 2004 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Brewster County Emergency Service District No. 1	5022503	.010000	SEE NOTE 1
Comal County Emergency Service District No. 3	5046523	.010000	SEE NOTE 2
Travis County Emergency Service District No. 11	5227542	.010000	SEE NOTE 3

A 1% Combined Area sales and use tax became effective April 1, 2004 in the combined area listed below.

COMBINED AREA NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Royse City/Hunt Co	6116608	.020000	SEE NOTE 4

NOTE 1: The Brewster County Emergency Services District No. 1 is located in the southern portion of Brewster County, which has a county sales and use tax. The Big Bend National Park is located entirely within the Brewster County Emergency Services District No. 1. The unincorporated areas of Brewster County in zip codes 79830, 79834 and 79852 are partially located within the Brewster County Emergency Services District No 1. Contact the district representative at 432/371-2807 for additional boundary information..

NOTE 2: The Comal Emergency Services District No. 3 is located in the northern portion of Comal County, which has a county sales and use tax. The Canyon Lake Community Library District, which has a special purpose district sales and use tax, is located entirely within the Comal County Emergency Services District No. 3. The unincorporated areas of Comal County in zip codes 78070, 78130, 78132, 78133, 78606, 78623, and 78666 are partially located within the Comal County Emergency Services District No. 3. Contact the district representative at 830/935-4777 for additional boundary information.

NOTE 3: The Travis County Emergency Services District No. 11 is located in the southeastern portion of Travis County. The Travis County Emergency Services District No. 11 does not include any area in the City of Austin or the Austin MTA. The unincorporated areas of Travis County in zip codes 78610, 78612, 78617, 78719, 78742, 78744 and 78747 are partially located within the Travis County Emergency Services District No. 11. Contact the district representative at 512/243-3477 for additional boundary information.

NOTE 4: The Royse City/Hunt Co combined area is located in the eastern portion of the City of Royse. Contact the district representative at 972-636-2250 for additional boundary information.

TRD-200402156

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 29, 2004

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Concho Valley Workforce Development Board

Request for Proposal

PROPOSAL SUBMISSION INFORMATION AND INSTRUCTIONS

This document is intended to convey all the information necessary to enable a potential responder to submit proposal (or proposals) in response to this Request for Proposals (RFP).

SOLICITATION OF PROPOSALS

The Concho Valley Workforce Development Board (Board) is seeking proposals from firms or consultants with experience in Industry Sector and/or Industry Cluster Analysis in response to this RFP to award funds for conducting an analysis in **Tom Green County, Texas,** which consists of the Metropolitan Statistical Area of San Angelo.

Firms or consultants responding to this RFP must describe the activities that will contribute to building a foundation for long-term success to delivering quality workforce services incorporating economic development and education by conducting an Industry Sector and/or Industry Cluster Analysis that focuses on:

• Emphasizing a strong academic foundation for workers

• Emphasize value and opportunities in high-growth careers that require some post-secondary education but not necessarily four-year degrees

• A better understanding of the skill needs of employers

• Identifying opportunities in high-growth industries and career ladders they offer

• Partnerships to create curricula to meet employer needs

• New and innovative options in proven programs, such as apprenticeships

PROPOSAL PROCESS

Authorized Contact: The authorized contact person for this RFP is:

Name: Mary Kay Kuss

Title: Director of Planning and Resource Development

Organization: Concho Valley Workforce Development Board

Mailing Address: P. O. Box 2779, San Angelo, Texas 76902-2779

Street Address: 36 E. Twohig Room 810 San Angelo, Texas (TX) 76903

Telephone: (325) 655-2005

Fax: (325) 482-8900

Email: mary.kuss@twc.state.tx.us

Other Communication: Communication with any other personnel or project partners in reference to or concerning this RFP, other than the contact person listed in these instructions, is prohibited. Failure to follow this provision may be grounds for disqualification of the application.

Letter of Intent to Apply: All potential offerors **must submit** a Letter of Intent to Apply in order for an offeror's proposal to be considered responsive and to provide the Concho Valley Workforce Development Board the required information to respond to written RFP questions. This letter will inform the organization of the offeror's intention to submit a proposal in response to this RFP and provide detailed contact information. A Letter of Intent to Apply is not binding should an offeror choose not to respond to the RFP by the deadline. **However, it is a requirement for all offerors who wish to submit proposals for consideration in the evaluation process. The Letter of Intent is due to the Concho Valley Workforce Development Board by 5:00 p.m. (CST) on April 8, 2004 and should include the following information** (a sample letter is included in Informational Resources, Part IV, Section A):

• Identification of the potential offeror(s);

• Reference to the RFP for which the application will be submitted (in this case, LC-PRD RFP #03-04, Industry Sector/Cluster Analysis; and

• Contact Information (Name, title, business, mailing address, street address, phone number, fax number and email address)

Application Due Date and Delivery Method:

Applications must be received no later than 5:00 pm CST, June 18, 2004 at:

Concho Valley Workforce Development Board

Mary Kay Kuss, Director of Planning and Resource Development

36 E. Twohig, Room #810

San Angelo, TX 76903

Applications received after this deadline will be disqualified. Any reasonable delivery method, except fax and E-mail, may be used. While not required, responders are encouraged to use a traceable delivery method, such as certified mail, return receipt requested, or a guaranteed express delivery service.

The Concho Valley Workforce Development Board will notify responders when their applications have been received and logged in via email notification.

Format:

• The response must be printed or typed in Font Size 12, on 8 1/2" by 11" paper (on one-side only), in a portrait orientation, and sequentially paginated (including attachments). Do not use any type of binder.

• An original and four complete, loose leaf, paper copies of the proposal must be submitted. The responder is encouraged to retain a paper reference copy.

• The original proposal must contain a cover letter with an original signature, in blue ink, by an appropriate representative of the firm.

Withdrawing Proposals: A proposal may be withdrawn at any time prior to the selection announcement date by written notification to the Concho Valley Workforce Development Board's primary contact person.

Amending Proposals: Proposals may be amended at any time after submission but prior to the due date in writing to the Concho Valley Workforce Development Board's authorized contact person. Applications may be amended after the due date only at the direction of the Concho Valley Workforce Development Board.

Additional Materials: The Concho Valley Workforce Development Board will only consider complete applications submitted by the due date for award. *Unless specifically requested by the Board, material submitted after the due date will not be considered.*

Changes and Amendments: The Concho Valley Workforce Development Board reserves the right to amend or withdraw this RFP at any time by notifying each potential responder of record.

Offeror's Conference Call: The Board will hold an Offeror's Conference Call on **Tuesday, April 20, 2004 at 2:00 p.m., Central Standard Time**. To participate in the Offeror's Conference, a Letter of Intent with all contact information must be received by March 21st to ensure notification of instructions to accessing the conference call. After this RFP is issued, the Offeror's Conference Call is intended to be the primary source of information for all potential offerors. After the conference call, only written questions on offeror letterhead or other entity-identifying communication (e.g., e-mail) will be accepted, and must be addressed to the Board contact person. In order to receive a response, questions must be received by the Board contact person no later than 5:00 p.m. on **Tuesday, April 27, 2004**. All Board responses will be in writing and copies will be sent to all prospective offerors who received an RFP packet.

The Board will exclude any non-responsive applications from further consideration and will notify the respective responder of such decision by certified mail.

Selection and Award Announcement: The Board and partners will evaluate proposals received, may request the proposing entity to provide a presentation, make a selection decision, and announce the awards to be made.

Protests: Any offeror submitting a proposal and wishing to protest the award, must submit the following information by certified mail to:

Johnny Griffin

Executive Director

Concho Valley Workforce Development Board

P. O. Box 2779

San Angelo, TX 76902-2779

The written protest, including relevant written information, must be received by the Board within ten (10) business days from the date of the announcement of the award. The written protest must:

• Identify the RFP being protested (in this case, it is RFP LC-PRD #03-04);

• State the grounds for the protest; including a description of any alleged acts or omissions by the Board which form the basis for the protest;

• Provide any written information which the protestor believes is relevant to the award; and

• Provide the basis for the protestor's interest in the award.

TRD-200402186
Mary Kay Kuss
Director of Planning and Resource Development
Concho Valley Workforce Development Board
Filed: March 29, 2004

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 04/05/04 - 04/11/04 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 04/05/04 - 04/11/04 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Sec. 303.005[3] for the period of 04/01/04 - 04/30/04 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 04/01/04 - 04/30/04 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200402190
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 30, 2004

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Texas Commission on Environmental Quality

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 3, 2004**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 3, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Cicero Patton; DOCKET NUMBER: 2003-0652-WOC-E; TCEQ ID NUMBER: 453-82-6777; LOCATION: 140 West Clark, Post Office Drawer H, Bartlett, Williamson and Bell Counties, Texas; TYPE OF FACILITY: groundwater facility for the City of Bartlett located in Williamson County and wastewater facility for the City of Bartlett located in Bell County; RULES VIOLATED: 30 TAC §30.33(c) and TWC, §7.303(b)(2), by committing fraud or deceit in obtaining his Class C Wastewater and Class C Groundwater licenses; PENALTY: $0; revocation of licenses, Class C Wastewater License and Class C Groundwater License; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929 and Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Lowery Petroleum, Inc. dba Sunshine Exxon and dba Laurel Park Texaco; DOCKET NUMBER: 2001-1244-PST-E; TCEQ ID NUMBERS: 5008 and 34552; LOCATIONS: 813 North 77 Sunshine Strip and 1110 South 77 Sunshine Strip, Harlingen, Cameron County, Texas; TYPE OF FACILITY: gasoline service station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all UST records; 30 TAC §334.49(c)(2) and TWC, §26.3475(d), by failing to operate and maintain the cathodic protection system to ensure that the rectifier and other system components are operating properly; 30 TAC §334.50(d)(2)(A) and TWC, §26.3475(c)(1), by failing to conduct weekly manual tank gauging for the petroleum substance tanks having nominal capacity of 550 gallons or less when using it as the sole method of tank release detection; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the UST system with an identification number that is identical to the UST identification number listed on the UST registration and self-certification form; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit the required UST registration and self-certification form to the commission within 60 days after the effective date; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current TCEQ delivery certificate was posted at the facility; 30 TAC §334.22, by failing to pay all outstanding UST fees; 30 TAC §334.10(b)(1)(A), by failing to maintain all UST records; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the USTs associated with the UST system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to perform an annual performance test on the line leak detectors; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with overfill prevention equipment; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to complete a UST registration and self-certification form with all the applicable information requested on the agency's authorized form for all regulated UST systems; PENALTY: $67,200; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Michael Reid and Angela Reid dba Mike's Mini Mart; DOCKET NUMBER: 2003-0843-PST-E; TCEQ ID NUMBER: 40447; LOCATION: 1324 West Upsur, Gladewater, Gregg County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $2,100; STAFF ATTORNEY: Snehal R. Patel, Litigation Division, MC R-12, (713) 422-8928; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: New Blessing, Inc. dba AM-PM Mini Mart II; DOCKET NUMBER: 2003-0811- PST-E; TCEQ ID NUMBERS: 9161 and RN600730907; LOCATION: 2721 North Collins, Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with gasoline pumps; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and Agreed Order Docket Number 1999-1071-PST-E, by failing to pay the penalty associated with the Agreed Order Docket Number 1999- 1071-PST-E; PENALTY: $3,150; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Quality Caliche Pit, Inc.; DOCKET NUMBER: 2003-0197-MSW-E; TCEQ ID NUMBERS: 455150022 and RN102952843; LOCATION: north side of 3 Mile Line, at the northwest corner of the intersection of 3 Mile Line and Western Road, Mission, Hildalgo County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.5(a), by causing, suffering, allowing, and/or permitting the disposal of municipal solid waste at an unauthorized disposal site; PENALTY: $18,375; STAFF ATTORNEY: Wendy Cooper, Litigation Division, MC R-4, (817) 588-5867; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200402199
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 31, 2004

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 3, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should

be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 3, 2004**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: DMV Stainless USA, Inc.; DOCKET NUMBER: 2002-1077-AIR-E; TCEQ ID NUMBER: HG-3179-U; LOCATION: 12050 West Little York Road, Houston, Harris County, Texas; TYPE OF FACILITY: stainless steel pipe production plant; RULES VIOLATED: 30 TAC §122.145(2)(B) and §122.146(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the certification period; PENALTY: $2,650; STAFF ATTORNEY: Richard S. O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Kayan Foods, Inc. dba Delta Food Store; DOCKET NUMBER: 2003-0914-PST-E; TCEQ ID NUMBER: 39747; LOCATION: 9803 South Kirkwood Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $3,210; STAFF ATTORNEY: Robin Chapman, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(3) COMPANY: Kuykendall Oil Co., Inc. dba Brady Food Mart; DOCKET NUMBER: 1999-1198- PST-E; TCEQ ID NUMBER: 9828; LOCATION: 2017 South Bridge, Brady, McCulloch County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475, by failing to have a release detection method capable of detecting a release from any portion of the UST system; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475, by failing to provide proper overfill prevention equipment for the UST system; 30 TAC §334.93, by failing to demonstrate the required financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition or within 30 days of the date on which the owner or operator first became aware of the change or addition; 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.49(c)(2)(B) and (C), by failing to provide appropriate equipment or devices capable of indicating the operational status of the impressed current cathodic protection system at all times and failing to regularly inspect impressed current cathodic protection systems at least once every 60 days to ensure the rectifier and other system components were operating properly; PENALTY: $18,700; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Panjwani Enterprises, Inc. dba Conoco Truck Stop; DOCKET NUMBER: 2002- 0454-PST-E; TCEQ ID NUMBER: 0000939; LOCATION: 8901 South Interstate 45, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A) and TWC, §26.3475, by failing to provide release detection for the diesel tanks; and 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii), by failing to reconcile inventory control records for the diesel tanks on a monthly basis and failing to conduct proper automatic inventory control procedures for five in-service tanks; PENALTY: $10,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(5) COMPANY: Petro-Chemical Transport, Inc.; DOCKET NUMBER: 2002-0870-PST-E; TCEQ ID NUMBER: RN103950572; LOCATION: 9947 Garland Avenue, Garland, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current TCEQ delivery certificate prior to the deposit of a regulated substance into the UST system; PENALTY: $1,000; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Ricky Palasota; DOCKET NUMBER: 2002-0761-MSW-E; TCEQ ID NUMBER: 455090081; LOCATION: 7116 Raymond Stotzer Parkway, College Station, Brazos County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste site; RULES VIOLATED: 30 TAC §330.4(a) and §324.4(1) and (2)(B), by failing to obtain a permit or TCEQ authorization for the disposal of solid waste and discharging used oil and other unidentified waste directly on the ground; PENALTY: $14,000; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239- 5915; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Texas Pacifico Transportation, Ltd.; DOCKET NUMBER: 2003-0131-MLM-E; TCEQ ID NUMBERS: F11534, TXR05O815, and RN102923489; LOCATION: 2200 East 28th Street, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: railroad switching and storage yard; RULES VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by burning used oil filters in an open barrel; 30 TAC §335.62 and 40 Code of Federal Regulations §262.11, by failing to perform waste determinations on waste ash, clean out sludges, oil-water separator wastewater, a leaking herbicide container, and two drums of an unknown substance; 30 TAC §281.25(a)(4) and §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number TXR05O815, Part III, §A(5)(a), by failing to properly label an above-ground storage tank, an above-ground diesel storage tank, and a one- gallon container; and 30 TAC §327.5(a), by failing to prevent the unauthorized discharge of industrial waste and failing to remove or abate the spills; PENALTY: $12,780; STAFF ATTORNEY: David Speaker, Litigation Division, MC 175, (512) 239-2548; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: Tubular Rental, Inc.; DOCKET NUMBER: 1999-1137-IHW-E; TCEQ ID NUMBER: RN103019337; LOCATION: 112 County Road 132, just north of the intersection of State Highway 44 and Farm-to-Market (FM) Road 2570, Jim Wells County, Texas; TYPE OF FACILITY: oil field service operation; RULES VIOLATED: 30 TAC §330.5 and TWC, §26.121(a), by causing, suffering, allowing and/or permitting the storage, transportation and/or disposal of municipal solid wastes on the east and west right-of-ways of FM

1554 southwest of Alice, so as to cause the discharge or imminent threat of discharge of municipal solid wastes into or adjacent to waters in the state without specific authorization from the commission; 30 TAC §330.5 and §335.4, by causing, suffering, allowing and/or permitting the collection, handling, storage, processing and/or disposal of municipal solid and/or hazardous wastes at the facility so as to cause the discharge or imminent threat of discharge of municipal solid and/or hazardous wastes into or adjacent to the waters in the state; and 30 TAC §335.62, by failing to perform hazardous waste determinations on wastes stored at the facility; PENALTY: $600; STAFF ATTORNEY: Kelly W. Mego, Litigation Division, MC R-4, (817) 588- 5922; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200402198
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 31, 2004

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 10, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 10, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Advance Petroleum Distributing Company, Inc.; DOCKET NUMBER: 2003- 1511-PST-E; IDENTIFIER: Regulated Entity Identification Number RN102411469; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by allegedly depositing a regulated substance into underground storage tanks (USTs) at the facilities that did not have valid, current delivery certificates; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ahor Enterprise Inc.; DOCKET NUMBER: 2003-0852-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 59801, Regulated Entity Identification Number RN100892173; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Barnhart Water Supply Corporation; DOCKET NUMBER: 2003-1251-PWS-E; IDENTIFIER: Public Water Supply (PWS) Identification Number 1180001; LOCATION: Barnhart, Irion County, Texas; TYPE OF FACILITY: water supply system; RULE VIOLATED: 30 TAC §290.43(e), by failing to provide proper facility fencing around the elevated storage tank; 30 TAC §290.41(c)(1)(A), (F), and (3)(O), by failing to provide fencing or housing for a well, failing to provide a sanitary control easement for a well, and failing to provide the required well completion data to the executive director prior to putting a well into service; and 30 TAC §290.46(t), by failing to post a system ownership sign at the well and elevated storage tank area; PENALTY: $805; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-5612; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Big Oaks Municipal Utility District dba Brentwood Estates; DOCKET NUMBER: 2003-1389-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13021-001, Regulated Entity Number RN102080025; LOCATION: near Houston, Fort Bend County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13021-001, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $4,480; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Brazos Valley Solid Waste Management Agency; DOCKET NUMBER: 2003- 1586-AIR-E; IDENTIFIER: Air Account Number BM-0233-J, Regulated Entity Reference Number RN100830090; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §122.121 and THSC, §382.054, by failing to obtain a TitleV permit for the Rock Prairie Road Landfill; and 30 TAC §312.9 and THSC, §361.013, by failing to pay the waste management sludge haulers fee for Fiscal Year 1998; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Crystal Clear Water Supply Corporation; DOCKET NUMBER: 2003-0620- PWS-E; IDENTIFIER: PWS Identification Number 0940015, Regulated Entity Reference Number RN101437994; LOCATION: near San Marcos, Guadalupe County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to maintain a maximum level of 0.080 milligrams per liter (mg/L) for total trihalomethane contaminant levels for the fourth quarter of 2002 and the first quarter of 2003; PENALTY: $1,060; ENFORCEMENT COORDINATOR: Rick Ciampi, (512) 239-3119; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Dream Enterprises, Inc. dba Barbin's Super Store ; DOCKET NUMBER: 2003-0281-PST-E; IDENTIFIER: PST Facility Identification Number 0044911; LOCATION: Needville, Fort Bend

County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases at least once per month, not to exceed 35 days between each monitoring; and 30 TAC §334.48(c), by failing to conduct inventory control and reconciliation for a UST system at a retail facility; PENALTY: $600; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(8) COMPANY: Eastern Trust, Ltd dba Hamilton ET; DOCKET NUMBER: 2003-1497-PST-E; IDENTIFIER: PST Facility Identification Number 74943; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; and 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, not to exceed 35 days between each monitoring; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Enbridge Energy Company, Inc.; DOCKET NUMBER: 2003-1259-AIR-E; IDENTIFIER: Air Account Number BE-0028-D; LOCATION: Tuleta, Bee County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §106.8(c)(1) and THSC, §382.085(b), by failing to maintain a copy of each permit by rule and the applicable general conditions or requirements in effect at the time; 30 TAC §122.145(2)(A), by failing to submit an accurate semi-annual deviation report for the August 25, 2001 - February 24, 2002 deviation reporting period; 30 TAC §122.146(5)(D), by failing to submit an accurate annual compliance certification for the August 25, 2001 - August 24, 2002 annual compliance certification period; and 30 TAC §122.503(a)(2), by failing to submit an application for a new authorization due to an ownership change; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas, 78412-5503, (361) 825-3100.

(10) COMPANY: Environmental Processing Systems, L.C.; DOCKET NUMBER: 2003-1272- UIC-E; IDENTIFIER: Underground Injection Control (UIC) Permit Number WDW 316; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: commercial land disposal with UIC; RULE VIOLATED: 30 TAC §331.63(b), 40 Code of Federal Regulations (CFR) §146.67(a), and UIC Permit Number WDW 316, by failing to operate the injection well under the permitted maximum injection pressure limit of 1,500 pounds per square inch, and failing to maintain the liner free of cracks and gaps; and 30 TAC §331.65(b)(1) and §331.67(a), by failing to report self-monitoring data accurately; PENALTY: $22,680; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Eott Energy Pipeline Limited Partnership; DOCKET NUMBER: 2003-1457- AIR-E; IDENTIFIER: Air Account Number CV-0048-K; LOCATION: near Gainsville, Cooke County, Texas; TYPE OF FACILITY: bulk fuel storage; RULE VIOLATED: 30 TAC §122.146(1) and (2), by failing to submit the annual Title V compliance certification for the period of February 10 - December 20, 2002; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Houston Pipe Line Company; DOCKET NUMBER: 2003-1482-AIR-E; IDENTIFIER: Air Account Number LK-0044-R, Regulated Entity Identification Number RN100213131; LOCATION: near George West, Live Oak County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a Title V annual compliance certification within 30 days after the end of the June 2, 2002 - June 1, 2003 certification period; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas, 78412- 5503, (361) 825-3100.

(13) COMPANY: Knox Oil of Texas, Inc.; DOCKET NUMBER: 2003-0114-MWD-E; IDENTIFIER: TPDES Permit Number 12945-001 (Expired); LOCATION: Hillsboro, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.42(a), §305.125(1), TPDES Permit Number 12945-001, Permit Condition Number 4(c), and the Code, §26.121(a), by operating without a permit; PENALTY: $6,080; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Longhorn Glass Manufacturing, L.P. dba Longhorn Glass Corporation; DOCKET NUMBER: 2002-1392-AIR-E; IDENTIFIER: Air Account Number HG-0028-R; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: glass bottle manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), Air Permit Number 42623, Special Condition 1, and THSC, §382.085(b), by failing to operate within the permitted limit of 53.7 pounds per hour of sulphur dioxide; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(15) COMPANY: Millennium Petrochemicals, Inc. and Linde Gas, Inc.; DOCKET NUMBER: 2003-1486-IWD-E; IDENTIFIER: TPDES Permit Number 04092; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04092, and the Code, §26.121(a), by failing to meet effluent limits at Outfalls 001, 002, and 201; PENALTY: $9,480; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: City of New London; DOCKET NUMBER: 2003-1341-MWD-E; IDENTIFIER: TPDES Permit Number 12376-001; LOCATION: New London, Rusk County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12376-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits at Outfall 001 for biochemical oxygen demand (BOD) daily average, total suspended solids (TSS) daily average, and flow daily average; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Ed Moderow, (512) 239-2680; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: Nisseki Chemical Texas Inc.; DOCKET NUMBER: 2003-1466-AIR-E; IDENTIFIER: Air Account Number HG-3626-Q, Regulated Entity Reference Number RN102887270; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: organic chemical manufacturing; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit Form ECT-1, Annual Compliance Report, in a timely manner; PENALTY: $1,340; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-1105; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Occidental Permian, Ltd.; DOCKET NUMBER: 2003-1235-AIR-E; IDENTIFIER: Air Account Number UB-0058-G, Regulated Entity Reference Number RN100225737; LOCATION: McCamey, Upton County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §101.20(1), TCEQ General Operating Permit Number O- 00558, 40 CFR §60.632(a) and §60.482-7(a), and THSC, §382.085(b), by failing to begin fugitive emissions monitoring within 180 days after the facility became subject to monitoring requirements; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit deviation reports for five reporting periods after permit issuance for the time intervals of February 19, 2000 - August 18, 2002; PENALTY: $11,700; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(19) COMPANY: City of Pearsall; DOCKET NUMBER: 2003-0377-MWD-E; IDENTIFIER: TPDES Permit Number 10360-001; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10360-001, and the Code, §26.121(a), by failing to comply with permitted limits at Outfall 001; PENALTY: $3,920; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-1105; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490- 3096.

(20) COMPANY: Peebles Lumber Company, LLC; DOCKET NUMBER: 2003-1504-AIR-E; IDENTIFIER: Regulated Entity Reference Number RN102941200; LOCATION: near Ore City, Marion County, Texas; TYPE OF FACILITY: sawmill; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain a permit or permit by rule for drying kiln operations; PENALTY: $10,400; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239-2142; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(21) COMPANY: Penreco; DOCKET NUMBER: 2003-1493-AIR-E; IDENTIFIER: Regulated Entity Reference Number RN100221282, Air Account Number GB-0054-T; LOCATION: Dickinson, Galveston County, Texas; TYPE OF FACILITY: mineral oil production; RULE VIOLATED: 30 TAC §101.360(a) and THSC, §382.085(b), by failing to submit their Level of Activity Certification, Form ECT-3, in a timely manner; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Brandon Smith, (512) 239-4471; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Ponderosa Pine Energy Partners, Ltd.; DOCKET NUMBER: 2003-1535- AIR-E; IDENTIFIER: Air Account Number JH0230L; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: electric generating plant; RULE VIOLATED: 30 TAC §122.146(1) and (2), by failing to certify compliance with the terms and conditions of the operating permit within 30 days following the end of the 12-month reporting period of March 18, 2002 - March 17, 2003; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(23) COMPANY: City of Port Arthur; DOCKET NUMBER: 2003-0271-MWD-E; IDENTIFIER: TPDES Permit Numbers 10364-001 and 10364-002; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §315.1, TPDES Permit Numbers 10364-001 and 10364-002, and 40 CFR §403.5(c)(1) and (3) and §403.8(f)(4), by failing to submit, within 12 months of TPDES permit issuance at the Main and Port Acres Plants, a technical evaluation revising the technically-based local limits to attain surface water quality standards in waters in the state, a draft sewer use ordinance which incorporates such revisions, and any additional modifications necessary to the pretreatment program; 30 TAC §305.125(1), TPDES Permit Number 10364-001, and the Code, §26.121(a), by failing to meet effluent requirements during the months of April and November 2002 at the Main Plant; and TPDES Permit Number 10364-002, by failing to meet effluent requirements during the months of March, November, and December 2002 at the Port Acres Plant; PENALTY: $19,500; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: William Marsh Rice University; DOCKET NUMBER: 2003-1542-AIR-E; IDENTIFIER: Air Account Number HG1149U; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: university with generators and boilers; RULE VIOLATED: 30 TAC §122.146(2) and §122.143(4), Federal Operating Permit Number O-01806, and THSC, §382.085(b), by failing to submit an annual compliance certification within 30 days after the end of the July 18, 2001 - July 17, 2002 certification period; and 30 TAC §122.145(2)(A), by failing to submit a deviation report within 30 days after the end of the July 18, 2002 - January 17, 2003 deviation reporting period; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Rockett Special Utility District; DOCKET NUMBER: 2003-0690-WR-E; IDENTIFIER: PWS Number 0700033; LOCATION: Red Oak, Ellis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §288.30(4), by failing to submit the required drought contingency plan meeting the minimum requirements for use by a wholesale public water supplier; PENALTY: $1,313; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Sabre Communications Corporation dba Sabre Tubular Structures; DOCKET NUMBER: 2003-1447-AIR-E; IDENTIFIER: Air Account Number TA0496G; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: manufacturing metal conduit for cellular communication; RULE VIOLATED: 30 TAC §122.146(1) and (2) and Federal Operating Permit Number O-02094, by failing to submit Title V permit compliance certification within 30 days following the end of the 12-month reporting period; and 30 TAC §122.145(2)(B), by failing to submit a semi-annual Title V deviation report for the deviations from the operating permit following the end of the six-month deviation reporting period; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Scenic Point Northview, Inc.; DOCKET NUMBER: 2002-1018-MWD-E; IDENTIFIER: TPDES Permit Number 14173-001; LOCATION: near Graford, Palo Pinto County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §319.4 and §305.125(1) and TPDES Permit Number 14173-001, by failing to monitor effluent parameters, and failing to submit discharge monitoring reports; 30 TAC §325.4(d)(2), by failing to maintain a "C" licensed chief wastewater operator on staff as required for an activated sludge plant; 30 TAC §317.4(a)(5), by failing to have auxiliary power; and 30 TAC §305.53 and §220.21 and the Code, §26.0291(b), by failing to pay 2003 consolidated water quality assessment fee and late fee; PENALTY: $600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: City of Tenaha; DOCKET NUMBER: 2003-1327-MWD-E; IDENTIFIER: TPDES Permit Number

10818-001; LOCATION: near Tenaha, Shelby County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10818-001, and the Code, §26.121(a), by failing to comply with permit limit for TSS daily average of 90 mg/L at Outfall 001A for the monthly monitoring periods ending August 31, 2001 and September 30, 2001, failing to comply with a pH permit maximum effluent limit of 9.0 standard units at Outfall 001A for the August 2001 monitoring period, and failing to comply with the permit limit for carbonaceous BOD five-day average of 30 mg/L at Outfall 001A for the monthly monitoring period ending May 31, 2003; PENALTY: $1,600; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: TM Chemicals, L.L.C.; DOCKET NUMBER: 2003-1487-AIR-E; IDENTIFIER: Regulated Entity Reference Number RN102844271, Air Account Number HG3043A; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: toll processing; RULE VIOLATED: 30 TAC §101.359 and THSC, §382.085(b), by failing to submit Form ECT-1, Annual Compliance Report, in a timely manner; PENALTY: $800; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Try Transportation, Inc.; DOCKET NUMBER: 2003-1147-PST-E; IDENTIFIER: Regulated Entity Identification Number RN100669217; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel distribution; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that no common carrier shall deposit any regulated substance into a UST system unless he observes that the owner or operator has a valid, current delivery certificate; PENALTY: $976; ENFORCEMENT COORDINATOR: Rick Ciampi, (512) 239-3119; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(31) COMPANY: Wedgewood Hospitality, Inc. dba USA RV 2; DOCKET NUMBER: 2003- 1255-PWS-E; IDENTIFIER: PWS Identification Number 0790415; LOCATION: Guy, Fort Bend County, Texas; TYPE OF FACILITY: recreational vehicle park; RULE VIOLATED: 30 TAC §290.109(c)(2) and (g)(4) and THSC, §341.033(d), by failing to take and submit bacteriological samples for analysis for the months of April - July 2003, and failing to notify the public of sampling deficiencies; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Walter Lassen, (512) 239-0513; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200402189
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 30, 2004

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activities Report due September 10, 2003

Stephen L. Sanders, 1701 Directors Blvd., Ste. 250, Austin, Texas 78744

Jennifer N. Stevens, 4400 South Monaco St., Denver, Colorado 80237

Deadline: Lobby Activities Report due October 10, 2003

Jennifer N. Stevens, 4400 South Monaco St., Denver, Colorado 80237

Kym Nicole Olsen (Hricik), Four Greenway Plaza, Houston, Texas 77046

Melodie Stegall, 12208 N. Mopac Expressway, Austin, Texas 78758

Deadline: Lobby Activities Report due November 10, 2003

Jennifer N. Stevens, 4400 South Monaco St., Denver, Colorado 80237

Darryl B. Carter, 1301 Travis, Ste. 300, Houston, Texas 77002

Stacy Schmitt, P.O. Box 7852, Waco, Texas 76714-7852

Deadline: Lobby Activities Report due December 10, 2003

Jennifer N. Stevens, 4400 South Monaco St., Denver, Colorado 80237

Darryl B. Carter, 1301 Travis, Ste. 300, Houston, Texas 77002

Mark Seale, 1108 Lavaca, Ste. 400, Austin, Texas 78701

Deadline: Lobby Activities Report due January 12, 2004

Urban F. O'Brien III, 2000 Post Oak Blvd., Ste. 100, Houston, Texas 77056-4497

Pamela R. Beachley, 906 Rio Grande St., Austin, Texas 78701

Edward G. Fiesinger, P.O. Box 711, Alvin, Texas 77512

Alan R. Erwin, 400 W. 15th St., Ste. 804, Austin, Texas 78701

Mack Wallace, 98 San Jacinto Blvd., Ste. 900, Austin, Texas 78701

L. Dean Cobb, 221 West 6th St., Ste. 150, Austin, Texas 78701

Terri Seales, 1122 Colorado St., Ste. 208, Austin, Texas 78701

Jacob C. Fuller, 4314 N. Central Expy., Dallas, Texas 78206

Hugo Berlanga, 919 Congress Ave., Ste. 750, Austin, Texas 78701

Sheryl T. Dacso, Law Offices of Dacso & Associates, 1827 Norfolk St., Houston, Texas 77098

Nancy M. Molleda, Capital Consultants, 1122 Colorado St., Ste. 307, Austin, Texas 78701

Melinda Wheatley, 208 Westhaven Dr., Austin, Texas 78746-4443

Carlos A. Truan, Jr., 1005 Congress Ave., Ste. 350, Austin, Texas 78701

Darryl B. Carter, 1301 Travis, Ste. 300, Houston, Texas 77002

Omniah Z. Ebeid, 1821 Rutherford Lane, Ste. 400, Austin, Texas 78754-5128

Michael L. McCormick, 98 San Jacinto Blvd., Ste. 900, Austin, Texas 78701

Thomas R. Kowalski, 815 Brazos St., Ste. 310, Austin, Texas 78701

William E. Driscoll, TXU Business Services, 1601 Bryan St., Dallas, Texas 75201

Mimi Nash, 3000 Waterview Parkway, Richardson, Texas 75080-1400

Anthony Haley, 815 Brazos St., Ste. 200, Austin, Texas 78701

Rebecca Waldrop, 12200 Grimsley Dr., Austin, Texas 78759

Patrick O. Smith, 100 Congress Ave., Ste. 1300, Austin, Texas 78701-2744

John P. Connolly, 2700 W. 15th St., Plano, Texas 75075-7524

Jim Terrell, 1220 Colorado St., Ste. 100, Austin, Texas 78701-1851

Melinda Little, 12335 Kingsride Lane, Ste. 159, Houston, Texas 77024-4116

Jerry H. Apodaca, 1477 Miracerros Loop N., Santa Fe, New Mexico 87505-4021

Jennifer N. Stevens, 4400 South Monaco St., Denver, Colorado 80237

Carter Headrick, 10107 Talleyran Dr., Austin, Texas 78750-3834

Jean Bruney Alford, 5959 Las Colinas Blvd., Irving, Texas 75039

Steven C. Ray, 223 Elm Forest, Cedar Creek, Texas 78612

Albert Black, 409 W. 13th St., Austin, Texas 78701

Todd M. Smith, 2204 Hazeltine Lane, Austin, Texas 78747

Omega Gamboa, 8723 Turning Leaf, Pair Oaks Ranch, Texas 78015-6517

Normal Scott Jones, 5949 Sherry Lane, Ste. 1800, Dallas, Texas 75225

TRD-200402119
Karen Lundquist
Executive Director
Texas Ethics Commission
Filed: March 24, 2004

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Texas Department of Health

Correction of Error

The Texas Department of Health proposed new rule 25 TAC §289.301 in the March 26, 2004, issue of the *Texas Register.* Due to errors in the document the agency submitted, subsections (d)(12) and (d)(32) of §289.301 were published incorrectly.

On page 3156, second column, a question mark appears in place of the symbol ≥ in subsection (d)(12). The text should read as follows:

(12) Continuous wave--The output of a laser that is operated in a continuous rather than a pulsed mode. In this section, a laser operating with a continuous output for a period of ≥0.25 seconds is regarded as a continuous wave laser.

On page 3157, first column, parts of the equation in the last line of subsection (d)(32) were subscripted in error. The text should read as follows:

(32) Optical density (D_λ)--The logarithm to the base ten of the reciprocal of the transmittance. $D_\lambda = -\log_{10}\tau_\lambda$, where τ_λ is transmittance.

TRD-200402234

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Correction of Error

The Texas Department of Health adopted new rules 25 TAC §§97.61 - 97.72 in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3188). The rules took effect April 1, 2004.

The following comment and agency response were inadvertently omitted from the preamble to the rule adoption notice:

Comment: At the suggestion of the Board of Health, geographical data will be collected from the affidavit requests received by the Bureau of Immunization and Pharmacy Support. Geographical data will be collected for public health purposes.

Response: The department agrees. Non-identifiable geographical data will be collected from the affidavit requests for public health purposes.

TRD-200402236

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Texas Health and Human Services Commission

Public Notice Statement

The Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services TN# 04-09, Amendment 668 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act, effective April 10, 2004.

This amendment adds a statewide disease management program for categorically needy eligible persons who have one or more of the following diseases and who receive medical services through the Medicaid fee-for-service system: congestive heart failure (CHF); asthma; diabetes, chronic obstructive pulmonary disease (COPD); and coronary artery Disease (CAD).

To obtain copies of the proposed amendment, interested parties may contact Winnie Rutledge, at winnie.rutledge@hhsc.state.tx.us or by telephone (512) 491-1320.

TRD-200402153
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: March 26, 2004

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Houston-Galveston Area Council

Public Meeting Notice

Public Meetings on the Draft 2025 Regional Transportation Plan

Tuesday, April 6, 2004, 6 p.m. - 8 p.m.

Friendswood City Hall

910 South Friendswood Drive

Friendswood, Texas 77456

Thursday, April 8, 2004, 6 p.m. - 8 p.m.

Conroe City Hall

300 West Davis

Conroe, Texas 77301

Tuesday, April 13, 2004, 6 p.m. - 8 p.m.

Houston-Galveston Area Council

3555 Timmons Lane, 2nd Floor, Conference Room A

Houston, Texas 77027

Wednesday, April 14, 2004, 6 p.m. - 8 p.m.

Sugar Land City Hall

10405 Corporate Drive

Sugar Land, Texas 77478

Tuesday, April 20, 2004, 6 p.m. - 8 p.m.

Lake Jackson Civic Center

333 Highway 332 East

Lake Jackson, Texas 77566

The Houston-Galveston Area Council (H-GAC) is hosting a series of public meetings on the Draft 2025 Regional Transportation Plan (RTP). The 2025 RTP provides a framework for identifying transportation priorities and major transportation challenges, such as regional mobility, air quality and safety. The public is encouraged to attend this important meeting and provide comments to H-GAC on the draft plan.

The public comment period on the Draft 2025 RTP began **Friday, March 19, 2004**. Comments must be received by H-GAC no later than **5 p.m., Tuesday, May 4, 2004**. Copies of the Draft 2025 RTP are available on H-GAC's Transportation Web site, **www.h-gac.com/transportation**, or by calling Ursurla Williams at (713) 993-2455. Written comments may be submitted to Alan Clark, MPO Director, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, emailed to rtp@h-gac.com or faxed to (713) 993-4508.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Kim Green at (713) 993-4577 to make arrangements.

TRD-200402196
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: March 31, 2004

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of CYPRESS DENTAL ADMINISTRATORS, a foreign third party administrator. The home office is STOCKTON, CALIFORNIA.

Application for incorporation in Texas of FIRST CARDINAL OF TEXAS LTD., a domestic third party administrator. The home office is IRVING, TEXAS.

Application for incorporation in Texas of REBECCA LYNN IBISON (using the assumed name TRUE BENEFITS ADMINISTRATORS), a domestic third party administrator. The home office is FLOWER MOUND, TEXAS.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200402233
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 31, 2004

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, April 21, 2004, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor
Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs and Donald Wayne Rogers dba Palm Lakes to hear alleged violations of Sections 1201.255, 1201.303(b), 1201.357(a), 1201.358, 1201.354, and 1201.356 of the Act and Sections 80.54(a), 80.131(b), and 80.132(3) of the Administrative Rules by not properly installing a manufactured home, by not complying with initial report and warranty orders of the Director, and by not providing this Department with copies of completed work orders in a timely manner. SOAH 332-04-4326. Department MHD2004000555-I.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589, jhicks@tdhca.state.tx.us

TRD-200402151
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: March 26, 2004

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on March 24, 2004, with the Public Utility Commission of Texas, for service area amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. (GVTC) for a Service Area Amendment to a Certificate of Convenience and Necessity. Docket Number 29510.

The Application: GVTC seeks to amend the serving area boundary of its Bulverde Exchange and Southwestern Bell Telephone, L.P. d/b/a SBC Texas' (SBC) New Braunfels Exchange. The proposed amendment will realign the boundaries between GVTC and SBC's service areas to allow GVTC to serve all the residential customers in the Rockwall Ranch subdivision. There are no existing customers in this area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 19, 2004, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 29510.

TRD-200402193
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 30, 2004

♦ ♦ ♦

Notice of Application for Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 22, 2004, for a certificate of operating authority (COA), pursuant to Public Utility Regulatory Act (PURA) §§54.101 - 54.105. A summary of the application follows.

Docket Title and Number: Application of EZ Phone, Incorporated for a Certificate of Operating Authority, Docket Number 29497 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested COA geographic area includes the area of Texas currently served by all Local Access and Transport Areas (LATAs).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2004. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29497.

TRD-200402124
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 25, 2004

♦ ♦ ♦

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On March 23, 2004, American Lightwave Communications, Incorporated filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60377. Applicant intends to relinquish its certificate.

The Application: Application of American Lightwave Communications, Incorporated to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 29504.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2004. Hearing and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29504.

TRD-200402125
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 25, 2004

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 22, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of QPQ Marketing, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 29489 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29489.

TRD-200402123
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 25, 2004

♦ ♦ ♦

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 24, 2004, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of McGraw Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 29509 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC - Texas, Verizon Southwest, United Telephone Company of Texas, Incorporated, and Central Telephone Company of Texas, doing business as Sprint.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2004. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 29509.

TRD-200402150
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 26, 2004

♦ ♦ ♦

Public Notice of Cancellation of Workshop on Project to Address Modification of the Definition of "Access Line" Pursuant to Local Government Code §283.003

The staff of the Public Utility Commission of Texas (commission) has cancelled the workshop regarding modifying the definition of the term "access line," pursuant to Local Government Code §283.003, initially scheduled to occur on Tuesday, April 13, 2004, at 9:30 a.m. at the commission's offices. Notice with questions was published in the March 5, 2004, issue of the *Texas Register* (29 Tex Reg 2469). Project Number 29347, *Project to Address Modification of the Definition of "Access*

Line" Pursuant to Local Government Code §283.003, is assigned to this proceeding. The proceeding has been abated. Commission staff will reschedule the workshop in the near future and requests parties to withhold any comments related to Project Number 29347, previously due on April 6, 2004, until further notice.

Questions concerning this notice should be referred to Mark Gladney, Staff Attorney, Legal and Enforcement Division, (512) 936-7297, mark.gladney@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200402191
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 30, 2004

♦ ♦ ♦

Railroad Commission of Texas

Adoption of Certain Oil and Gas Forms

The Railroad Commission of Texas has adopted amendments to 16 TAC §3.80, relating to Commission Forms, Applications and Filing Requirements, as published in this issue of the *Texas Register*. The amendments were proposed in the December 26, 2003, issue of the *Texas Register* (28 TexReg 11685) and add language concerning electronic filings with the Commission, require rulemaking for adoption or revision of forms, and incorporate a list of current forms and their creation or last revision dates. The Commission received two comments on the proposed amendments and/or forms; the comments are discussed in the adoption preamble for §3.80, which is adopted with some changes from the proposed version.

The forms included in this project are:

(1) Form H-1, Application to Inject Fluid into a Reservoir Productive of Oil or Gas;

(2) Instructions for Form H-1;

(3) Form H-1A, Injection Well Data;

(4) Form H-1A Instructions;

(5) Form W-14, Application to Dispose of Oil and Gas Waste by Injection into a Formation Not Productive of Oil and Gas;

(6) Form W-14 Instructions;

(7) Form W-1, Application for Permit to Drill, Recomplete or Re-Enter;

(8) Form W-1 Instructions;

(9) Form W-1D, Supplemental Directional Well Information;

(10) Form W-1H, Supplemental Horizontal Well Information;

(11) Form PR, Monthly Production Report; and

(12) Form PR Instructions.

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

Form H-1
05/2004

APPLICATION TO INJECT FLUID INTO A RESERVOIR PRODUCTIVE OF OIL OR GAS

1.Operator name _____ 2. Operator P-5 No. _____
(as shown on P-5, Organization Report)

3.Operator Address _____

4. County _____ 5. RRC District No. _____

6. Field Name _____ 7. Field No. _____

8. Lease Name _____ 9. Lease/Gas ID No. _____

10. Check the Appropriate Boxes: New Project ☐ Amendment ☐

If amendment, Fluid Injection Project No. F-_____

Reason for Amendment: Add wells ☐ Add or change types of fluids ☐ Change pressure ☐

Change volume ☐ Change interval ☐ Other (explain) _____

RESERVOIR DATA FOR A NEW PROJECT

11. Name of Formation _____ 12. Lithology _____
(e.g., dolomite, limestone, sand, etc.)

13. Type of Trap _____ 14. Type of Drive during Primary Production _____
(anticline, fault trap, stratigraphic trap, etc.)

15. Average Pay Thickness _____ 16. Lse/Unit Acreage _____ 17. Current Bottom Hole Pressure (psig) _____

18. Average Horizontal Permeability (mds) _____ 19. Average Porosity (%) _____

INJECTION PROJECT DATA

20. No. of Injection Wells in this application _____

21. Type of Injection Project: Waterflood ☐ Pressure Maintenance ☐ Miscible Displacement ☐ Natural Gas Storage ☐

Steam ☐ Thermal Recovery ☐ Disposal ☐ Other _____

22. If disposal, are fluids from leases other than the lease identified in Item 9? Yes ☐ No ☐

23. Is this application for a Commercial Disposal Well ? Yes ☐ No ☐

24. If for commercial disposal, will non-hazardous oil and gas waste other than produced water be disposed? Yes ☐ No ☐

25. Type(s) of Injection Fluid:

Salt Water ☐ Brackish Water ☐ Fresh Water ☐ CO_2 ☐ N_2 ☐ Air ☐ H_2S ☐ LPG ☐ NORM ☐

Natural Gas ☐ Polymer ☐ Other (explain) _____

26. If water other than produced salt water will be injected, identify the source of each type of injection water by formation, or by aquifer and depths, or by name of surface water source:

CERTIFICATE

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete, to the best of my knowledge.

_____
Signature Date

Name of Person (type or print)

Phone _____ Fax _____

For Office Use Only	*Register No.*	*Amount $*

See Reverse Side for Required Attachments

05/2004

INSTRUCTIONS FOR FORM H-1

1. **Application**. File the original Form H-1 application, including all attachments, with Assistant Director, Environmental Services, Railroad Commission of Texas, P. O. Box 12967, Capitol Station, Austin, Texas 78711. File one copy of the application and all attachments with the appropriate Railroad Commission District Office. Include with the original application a non-refundable fee of $200, payable to the Railroad Commission of Texas. Submit an additional $150 for each request for an exception to Statewide Rule 46(g)(3) and/or (j)(5)(B).

2. **Well Logs.** Attach the complete electric log or a similar well log for one of the proposed injection wells or for a nearby well. Attach any other logging and testing data, such as a cement bond log, available for the well that supports this application.

3. (a) **For a new project**, attach a map with surveys marked showing the location and depth of all wells of public record within one-quarter (1/4) mile radius of the proposed injection well(s).
(b) **For an amendment to add wells to a previous authority,** attach a map with surveys marked showing the location and depth of all wells of public record within one-quarter (1/4) mile radius of the additional wells, unless such data has been submitted previously for the project.
(c) **Table of Wells**. For those wells in 3(a) or 3(b) that penetrate the top of the injection interval, attach a table of wells showing the dates drilled and their current status. The Commission may adjust or waive this data requirement in accordance with provisions in the "Area of Review" section of Statewide Rule 46 (Rule 46(e)).

4. **Water Letter**. Attach a letter from the Texas Commission on Environmental Quality (TCEQ) or its predecessor or successor agencies for a well within the project area stating the depth to which usable quality water occurs.

5. **Form(s) H-1A**. Attach Form H-1A showing each injection well to be used in the project. Up to TWO wells can be listed on each Form H-1A.

6. **Use of Fresh Water**. Attach Form H-7, Fresh Water Data Form, for a new injection project that includes the use of fresh water. An updated Form H-7 must be attached to Form H-1 for an expansion of a previously authorized fresh water injection project unless the fresh water is purchased from a commercial supplier, public entity, or from another operator.

7. **Plat of Leases, Notice and Hearings**

(a) Plat of Leases. Attach a plat of leases showing producing wells, injection wells, offset wells and identifying ownership of all surrounding leases within one-half (1/2) mile.

(b) Notice.
(1) Send or deliver a copy of the application to the owner of record of the surface tract on which the well(s) is located; each Commission-designated operator of any well located within one-half (1/2) mile of the proposed injection well(s); and the clerk of the city and county in which the well(s) is located. If this is the initial application for fluid injection authority for this reservoir, send copies of the application to all operators in the reservoir. Attach a signed statement indicating the date the copies of the application were mailed or delivered and the names and addresses of the persons to whom copies were sent.

(2) Attach an affidavit of publication signed by the publisher that notice of the application has been published in a newspaper of general circulation in the county where the well(s) will be located. Notice instructions and forms may be obtained from the Commission's Austin Office, the Commission's website (www.rrc.state.tx.us) or the District Offices. Attach a newspaper clipping of the published notice.

(c) Protests and Hearings. An affected person or local government may protest this application. A hearing on the application will be held if a protest is received and the applicant requests a hearing, or if the Commission determines that a hearing is in the public interest. Any such request for a public hearing shall be in writing and contain: (1) the name, mailing address and phone number of the person making the request; and (2) a brief description of how the protestant would be adversely affected by the granting of the application. If the Commission determines that a valid protest has been received, or that a hearing would be in the public interest, a hearing will be held after issuance of proper and timely notice of the hearing by the Commission. If no protest is received within fifteen (15) days of publication or receipt in Austin of the application, the application may be processed administratively.

05/2004

RAILROAD COMMISSION OF TEXAS -- OIL AND GAS DIVISION

Form H-1A

INJECTION WELL DATA (attach to Form H-1)

1. Operator Name (as shown on P-5) | 2. Operator P-5 No.

3. Field Name | 4. Field No.

5. Current Lease Name | 6. Lease/Gas ID No.

7. Lease is _____ miles in a _____ direction from _____ (center of nearest town).

8. Well No.	9. API No.	10. UIC No.	11. Total Depth	12. Date Drilled	13. Base of Usable Quality Water (ft)

14. (a) Legal description of well location, including distance and direction from survey lines:

(b) Latitude and Longitude of well location, if known (optional) Lat. _____ Long. _____

15. New Injection Well ☐ or Injection Well Amendment ☐ | Reason for Amendment: Pressure ☐ Volume ☐ Interval ☐ Fluid Type ☐

Other (explain) _____

Casing	Size	Setting Depth	Hole Size	Casing Weight	Cement Class	# Sacks of Cement	Top of Cement	Top Determined by
16. Surface								
17. Intermediate								
18. Long string								
19. Liner								

20. Tubing size	21. Tubing depth	22. Injection tubing packer depth	23. Injection interval _____ to _____

24. Cement Squeeze Operations (List all)	Squeeze Interval (ft)	No. of Sacks	Top of Cement (ft)

25. Multiple Completion? Yes ☐ No ☐	26. Downhole Water Separation? Yes ☐ No ☐	*NOTE: If the answer is "Yes" to Item 25 or 26, provide a Wellbore Sketch*

27. Fluid Type	28. Maximum daily injection volume for each fluid type (rate in bpd or mcf/d)	29. Estimated average daily injection volume for each fluid type (rate in bpd or mcf/d)

30. Maximum Surface Injection Pressure: for Liquid _____ psig for Gas _____ psig.

8. Well No.	9. API No.	10. UIC No.	11. Total Depth	12. Date Drilled	13. Base of Usable Quality Water (ft)

14. (a) Legal description of well location, including distance and direction from survey lines:

(b) Latitude and Longitude of well location, if known (optional) Lat. _____ Long. _____

15. New Injection Well ☐ or Injection Well Amendment ☐ | Reason for Amendment: Pressure ☐ Volume ☐ Interval ☐ Fluid Type ☐

Other (explain) _____

Casing	Size	Setting Depth	Hole Siz	Casing Weight	Cement Class	# Sacks of Cement	Top of Cement	Top Determined by
16. Surface								
17. Intermediate								
18. Long string								
19. Liner								

20. Tubing size	21. Tubing depth	22. Injection tubing packer depth	23. Injection interval _____ to _____

24. Cement Squeeze Operations (List all)	Squeeze Interval (ft)	No. of Sacks	Top of Cement (ft)

25. Multiple Completion? Yes ☐ No ☐	26. Downhole Water Separation? Yes ☐ No ☐	*NOTE: If the answer is "Yes" to Item 25 or 26, provide a Wellbore Sketch*

27. Fluid Type	28. Maximum daily injection volume for each fluid type (rate in bpd or mcf/d)	29. Estimated average daily injection volume for each fluid type (rate in bpd or mcf/d)

30. Maximum Surface Injection Pressure: for Liquid _____ psig for Gas _____ psig.

FORM H-1A INSTRUCTIONS

05/2004

1. File as an attachment to Form H-1 to provide injection well data for each application for a new injection well permit or to amend an injection well permit.

2. Complete the current field name and number (Items 3 and 4) with the current field designation in Commission records.

3. Complete the current lease name and number (Items 5 and 6) with the current lease identification in Commission records for each well in the application. Use separate H-1A Forms for each lease.

4. Provide the current well number(s) for existing wells in Item 8. Provide the proposed well numbers for wells that have not yet been drilled.

5. Check in Item 15 the appropriate box for a new injection well permit or an amendment to an injection well permit. If an amendment, check the appropriate boxes for the reason(s) for the application(s) for amendment. If "other" is checked, provide a brief explanation.

6. Provide complete well construction information (Items 16 through 26), including all proposed re-completion (e.g. liner, cement squeeze, tubing, packer). Attach additional sheets if necessary. For Item 19, if the liner was not to the surface, indicate both the top and the bottom depth of the liner as the "Setting Depth."

RAILROAD COMMISSION OF TEXAS
OIL AND GAS DIVISION

Form W-14
05/2004

APPLICATION TO DISPOSE OF OIL AND GAS WASTE BY INJECTION INTO A FORMATION NOT PRODUCTIVE OF OIL AND GAS

1 .Operator Name _____ 2. Operator P-5 No. _____

3. Operator Address: _____

4. County _____ 5. RRC District No. _____

6. Field Name _____ 7. Field Number _____

8. Lease Name _____ 9. Lease/Gas ID No. _____

10. Well is _____ miles in a _____ direction from _____ (center of nearest town). 11. No. acres in lease _____

12. Legal description of location including distance and direction from survey lines _____

13. Latitude/Longitude, if known (Optional) Lat. _____ Long. _____

14. New Permit: Yes ☐ No ☐ If no, amendment of Permit No. _____ UIC# _____

15. Reason for amendment: Pressure ☐ Volume ☐ Interval ☐ Commercial ☐ Other (explain) _____

16.Well No.	17.API No.		18.Date Drilled			19.Total Depth		20.Plug Date, if re-entry
Casing	Size	Setting Depths	Hole Size	Casing Weight	Cement Class	Cement Sacks (#)	Top of cement	Top Determined by
21. Surface								
22. Intermediate								
23. Long String								
24 .Liner								
25. Other								

26. Depth to base of Deepest Freshwater Zone _____ 27.Multiple completion? Yes ☐ No ☐

28. Multistage cement? Yes ☐ No ☐ If yes, DV Tool Depth: _____ft. No. Sacks: _____Top of Cement: _____

29. Bridge Plug Depth: _____ ft. 30. Injection Tubing Size: _____ in. and Depth _____ ft. 31. Packer Depth: _____ft.

32. Cement Squeeze Operations (List all giving interval and number of sacks of cement and cement top and whether Proposed or Complete.):

33. Injection Interval from _____ to _____ ft. 34. Name of Disposal Formation _____

35. Any Oil and Gas Productive Zone within two miles? Yes ☐ No ☐
If yes, Depth _____ ft. and Reservoir Name _____

36. Maximum Daily Injection Volume _____ bpd 37. Estimated Average Daily Injection Volume _____bpd

38. Maximum Surface Injection Pressure _____ psig 39. Estimated Average Surface Injection Pressure_____ psig

40. Source of Fluids (Formation, depths and types): _____

41. Are fluids from leases other than lease identified in Item 8? Yes ☐ No ☐ 42. Commercial Disposal Well? Yes ☐ No ☐

43. If commercial disposal, will non-hazardous oil and gas waste other than produced water be disposed of? Yes ☐ No ☐

44. Type(s) of Injection Fluid: Salt Water ☐ Brackish Water ☐ Fresh Water ☐ CO_2 ☐ N_2 ☐ Air ☐ H_2S ☐

LPG ☐ NORM ☐ Natural Gas ☐ Polymer ☐ Other (explain) _____

CERTIFICATE

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete, to the best of my knowledge.

Signature Date

Name of Person (type or print)

Phone Fax

FOR OFFICE USE ONLY	*REGISTER NO.*	*AMOUNT $*

APPLICANT ALSO MUST COMPLY WITH THE INSTRUCTIONS ON THE REVERSE SIDE

FORM W-14 INSTRUCTIONS

1. File the original application, including all attachments, with Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. File one copy of the application and all attachments with the appropriate district office.

2. Include with the original application a non-refundable fee of $100 payable to the *Railroad Commission of Texas*. Submit an additional $150 fee for each request for an exception to Statewide Rule 9(9) relating to Special Equipment.

3. Provide the current field name (Item 6) and field number (Item 7) designated in Commission records for an existing well. If the application is for a new well, provide the nearest producing field name and number.

4. Check in Item 14 the appropriate box for a new permit or an amendment of an existing permit. If an amendment, check the applicable boxes in Item 15 to indicate the reason for amendment and provide a brief explanation if "other" is checked.

5. If the application is for a new permit, attach a complete electrical log of the well or the log of a nearby well.

6. Attach a letter from the Texas Commission on Environmental Quality (TCEQ) or its predecessor or successor agency stating that the well will not endanger usable quality water strata and that the formation or stratum to be used for disposal does not contain usable quality water. To obtain the TCEQ letter, submit two copies of the Form W-14, a plat with surveys marked, and a representative electrical log to TCEQ, MC 151, P.O. Box 13087, Austin, Texas 78711-3087. NOTE: If the application is for an amendment, a new TCEQ letter is required only if the amendment is for a change in the disposal interval.

7. Attach a map showing the location of all wells of public record within one-half (1/2) mile radius of the proposed disposal well. On the map show each Commission-designated operator of each well within one-half (1/2) mile of the proposed disposal well. NOTE: For a commercial disposal well application, the map shall also show the ownership of the proposed disposal well tract and the surface tracts that adjoin the proposed disposal well tract.

8. Attach a table of all wells of public record that penetrate the disposal interval and that are within one-quarter (1/4) mile radius of the proposed disposal well. The table shall include the well identification, date drilled, depth, current status, and the plugging dates of those wells that are plugged. Identify any wells that appear to be or that you may know are unplugged or improperly plugged and penetrate the proposed injection interval. Alternatively, an applicant may request a variance under Rule 9(7)(B). NOTE: If the application is for an amendment, a table of wells within a one-quarter (1/4) mile radius is required only if the current permit was issued before April 1, 1982, or if the amendment is for a shallower disposal depth.

9. Attach a list of the names and mailing or physical addresses of affected persons who were notified of the application and when the notification was mailed or delivered. Include a signed statement attesting to the notification of the listed affected persons. Notice shall be provided by sending or delivering a copy of the front and back of the application to the surface owner of record of the surface tract where the well is located, each Commission-designated operator of any well located within one-half (1/2) mile of the proposed well, the county clerk, and the city clerk, or other city official, if the proposed well is located within municipal boundaries. In addition, notice of a commercial disposal well also shall be provided to surface owners of record of each surface tract that adjoins the surface tract where the proposed well will be located. NOTE: If the application is for an amendment, notification of the county clerk and the city clerk are required only if the amendment is for disposal interval or for commercial status.

10. Attach an affidavit of publication signed by the publisher that the notice of publication has been published in a newspaper of general circulation in the county where the disposal well will be located. Attach a newspaper clipping of the published notice. If the application is for a commercial disposal well, that fact must be stated in the published notice. NOTE: If the application is for an amendment, notification by publication is required only if the amendment is for disposal interval or for commercial status.

11. Attach any other technical information that you believe will facilitate the review of the application. Such information may include a cement bond log, a cementing record, or a well bore sketch.

Additional information is available in the *Underground Injection Control Manual*, which is available on the Railroad Commission's website: www.rrc.state.tx.us

No public hearing will be held on this application unless an affected person or local government protests the application, or the Commission administratively denies the application. Any protest shall be in writing and contain (1) the name, mailing address, and phone number of the person making the protest; and (2) a brief description of how the protestant would be adversely affected by the activity sought to be permitted. If the Commission or its delegate determines that a valid protest has been received, or that a public hearing is in the public interest, a hearing will be held upon written request by the applicant. The permit may be administratively issued in a minimum of 15 days after receipt of the application, published notice, or notification of affected persons, whichever is later, if no protest is received.

Enter if Assigned: API No.: 42-_____ Drilling Permit No.: _____ Rule 37/38 Case No.: _____	**RAILROAD COMMISSION OF TEXAS** **OIL AND GAS DIVISION** **APPLICATION FOR PERMIT TO DRILL, RECOMPLETE OR RE-ENTER**	**FORM W-1** 07/2004 Drilling Permit Fee Based on Depth: 0'-2000' $200 2001'-4000' $225 4001'-9000' $250 >9000'- $300 Expedited Service Fee ADD $150 Rule 37/38 Exception Fee ADD $200

1. RRC Operator No.:	2. Operator Name (as shown on P-5 Organization Report):	3. Operator Address (include street, city, state, zip):
4. Lease Name:	5. Well No.:	

GENERAL INFORMATION

6. Purpose of Filing (Mark ALL appropriate boxes): ☐ New Drill ☐ Recompletion ☐ Reclass ☐ Field Transfer ☐ Re-enter ☐ Amended ☐ Amended as Drilled (BHL) (Also File Form W-1D)

7. Wellbore Profile (Mark ALL appropriate boxes): ☐ Vertical ☐ Horizontal (Also File Form W-1H) ☐ Directional (Also File Form W-1D) ☐ Sidetrack

8. Total Vertical Depth:	9. Do you have the right to develop minerals under any right of way? ☐ Yes ☐ No	10. Is this well subject to Statewide Rule 36 (hydrogen sulfide area)? ☐ Yes ☐ No

SURFACE LOCATION AND ACREAGE INFORMATION

11. RRC District No:	12. County:	13. Surface Location: ☐ Land ☐ Bay/estuary ☐ Inland waterway ☐ Offshore

14. This well is to be located _____ miles in a _____ direction from _____, which is the nearest town in the county.

15. Section:	16. Block:	17. Survey:	18. Abstract No:	19. Distance to nearest lease line:	20. Number of contiguous acres in lease, pooled unit or unitized tract:

21. Lease Perpendiculars: _____ ft. from the _____ line and _____ ft from the _____ line.

22. Survey Perpendiculars: _____ ft from the _____ line and _____ ft from the _____ line.

23. Is this a pooled unit? ☐ Yes ☐ No	24. Unitization Docket No: _____	25. Are you applying for Substandard Acreage Field? ☐ Yes (attach Form W-1A) ☐ No

FIELD INFORMATION List all fields of anticipated completion including Wildcat. List one zone per line. Attach an additional Form W-1 if you require more space.

26. RRC District No.	27. Field No:	28. Field Name (exactly as shown in RRC records)	29. Well Type	30. Completion Depth	31. Distance to Nearest Well in this Reservoir	32. No. of Wells on this Lease in this Reservoir

BOTTOMHOLE LOCATION INFORMATION is required for DIRECTIONAL, HORIZONTAL, AND AMENDED AS DRILLED PERMIT APPLICATIONS – Attach FORM W-1D/FORM W-1H as appropriate

Remarks:

RRC Use only

CERTIFICATE:

I declare under penalties in Sec. 91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete to be the best of my knowledge.

Name of Representative (Print) _____ Signature _____ Date (mm/dd/yy) _____

Telephone (AC and number) _____ E-mail Address (OPTIONAL – If provided, e-mail address will become part of this public record.) _____

FORM W-1 INSTRUCTIONS DRILLING PERMIT APPLICATION 07/2004 REFERENCE: Statewide Rules 5, 36, 37, 38, 39, and 40

A. COMPLIANCE. In order to file a Form W-1 you must have a current P-5 Organization Report and financial assurance (if required) on file with the Commission (RRC) and be in compliance with all RRC rules and orders. DO NOT BEGIN DRILLING OPERATIONS UNTIL YOU HAVE RECEIVED AUTHORIZATION FROM THE RRC. The operator must set and cement sufficient surface casing to protect all usable-quality water strata, as defined by the Texas Commission on Environmental Quality, or its predecessor or successor agencies.

B. WHERE AND WHAT TO FILE. File with the RRC in Austin the original Form W-1 application package, which consists of the completed Form W-1, fee payment, plat, completed Forms W-1D or W-1H, as necessary, and other documents as required. For fees, make check or money order payable to Railroad Commission of Texas. For information on use of credit cards or pre-paid accounts, contact the RRC. The Rule 37/38 exception fee covers one or more exceptions on the same application; if other than a "new drill," provide the original exception case or docket number. Fees are non-refundable. The RRC may waive fees if an amended application is filed at the request of RRC. Before you may initially file computer-generated paper Forms W-1, the RRC must approve the template. You may also electronically file drilling permit applications. For information, call (512)463-6751 or check the RRC's web site at www.rrc.state.tx.us

C. PURPOSE OF FILING (Item 6.). *Recompletion* is working over an existing wellbore to complete in a different field/reservoir. *Re-entry* is going back into a wellbore that has been plugged to the surface. *Reclassification* is changing an existing well originally permitted only as injection/disposal or other service well to an oil or gas producing well or changing an existing well in the Panhandle East or West fields from oil to gas or gas to oil production. For anything other than a "New Drill," indicate the API number. If the API number is not known, in "Operator Remarks" area, give the original operator, lease, and well identification and date of original completion or plugging. A materially amended permit requires a new Form W-1 and applicable fees, and usually involves the addition of a field/reservoir or a change in location on a previously permitted well. Include the original drilling permit number when filing an application for an amended permit.

D. WELLBORE PROFILE (Item 7.) Check "sidetrack" only for recompletions or re-entries, if applicable. File **FORM W-1D,** *Supplemental Directional Well Information,* if the proposed well configuration will be directional with one or more bottomhole locations. File **FORM W-1H,** *Supplemental Horizontal Well Information,* if the proposed well configuration will be horizontal with one or more terminus locations. For these types of completions, several different sets of location data are required. This data may or may not be the same for each field applied for; however, each different proposed bottomhole location or lateral must be associated with at least one field

E. LOCATION SPACING AND DENSITY. The proposed location must be "regular" in terms of the RRC's spacing (Rule 37 or field rules) and density (Rule 38 or field rules) requirements for each listed field; otherwise, an exception to those requirements must be sought.

REGULAR locations are in accordance with either (1) statewide spacing minimums – 467' from the nearest lease line and 1,200' from the nearest well (applied for, permitted or completed) on the same lease in the same reservoir and statewide density minimums – 40 acres; (2) spacing and density minimums,(which may vary according to depth) for County Regular Fields (Districts 7B, 9, and McCulloch County), where there are no field rules and the proposed depth is 5,000' or shallower; or (3) spacing and density standards set out in special rules for the field. Field and County Regular rules are available on the Internet at www.rrc.state.tx.us.

EXCEPTIONS to minimum standard spacing and density requirements may be requested. The application requires additional information on a *certified* plat (see G, below) and a list of names and addresses of all offsetting operators or unleased mineral interest owners of each tract that is contiguous to the drill site tract. Clearly key the list to the plat so that each tract/operator can be readily identified. If you do not have the right to develop the minerals under any right-of-way that crosses or is contiguous to this tract and the well requires a Rule 37 or 38 exception, also list the name and address of the entity that holds that right. If requesting only a lease-line spacing exception, list only the names and addresses of all affected persons for tracts closer to the well than the greater of ½ the prescribed minimum between-well spacing distance or the minimum lease-line spacing distance. If requesting only a between-well spacing exception, list only the names and addresses of all affected persons for each adjacent tract and each tract nearer to the well than the greater of ½ the prescribed minimum between-well spacing distance or the minimum lease-line spacing. *NOTE:* If you penetrate a Rule 37 or 38 field/reservoir not listed on the application, you will not necessarily be allowed to use the existence of this wellbore as justification for an exception to complete this wellbore in such field/reservoir in the future.

F. ACREAGE – OTHER

Pooled Units: Multiple tracts may be pooled together to meet minimum drilling unit acreage requirements. Complete and attach Form P-12, *Certificate of Pooling Authority.* On the plat (see G, below) outline pooled unit AND each tract listed on the Form P-12. If pooled or unitized through a hearing and the Docket number is noted in Item 24 of Form W-1, no Form P-12 (Certificate of Pooling Authority) is needed,

Substandard Acreage: Complete and submit a Form W-1A, *Substandard Acreage Drilling Unit Certification*, with the first and only well on a substandard tract or lease, and when using surplus acreage as a substandard pooled unit.

Contiguous Acres: Rule 39 requires that all acres in the lease or pooled unit be contiguous. If a Rule 39 exception has already been granted for the subject lease or unit, provide the docket number and issuance date in the box in the upper left-hand corner of the Form W-1.

G. PLAT. All drilling permit applications must be accompanied by a legible, accurate plat, at a scale of 1" = 1,000' and showing at least the lease or pooled unit line nearest the proposed location AND the nearest section/survey lines. The plat for the initial well on a lease or pooled unit must be of the entire lease or unit (including all tracts being pooled). The plat for subsequent wells on the pooled unit for which a Form P-12 is required must show the entire pooled unit. If necessary, submit the large area plat at a scale of 1" = 2,000' showing the entire lease. Plats for Rule 37 and/or 38 exceptions must also be certified and have offsets keyed to the offset listing (see E, above). The plat must include (1) the surface location of the proposed drilling site (for directional wells, also indicate projected bottomhole location and for horizontal wells also indicate projected penetration points and terminus locations); (2) a line and the distance from the surface location to the nearest point on the lease line or pooled unit line; if there is an unleased interest in a tract of the pooled unit that is nearer than the pooled unit line, use the nearest point on that unleased tract boundary; (3) a perpendicular line from two nearest non-parallel survey/section lines to the proposed surface and the proposed bottomhole or terminus locations and indicate distances. (4) a line from the proposed surface location to the nearest oil or gas well (applied for, permitted, or completed) in the same lease or pooled unit and in the same field (also indicate the distance and the API number of that well); (5) the name, as applicable, of the county, survey, abstract, section, block, lot, subdivision, etc.; (6) a scale bar; and (7) the northerly direction.

H. INDIVIDUAL ITEMS ON THE FRONT OF FORM W-1:

Item 8. For a recompletion, provide the projected—not measured--true vertical depth. For a plug-back recompletion, give the depth of the plug setting.

Item 10. If the well is subject to Rule 36, you must file a Form H-9 (Certificate of Compliance Statewide Rule 36) with the appropriate RRC district office.

Item 11. Provide RRC District No. associated with the County listed in Item 12.

Item 19. For pooled units, if there is an unleased/non-pooled interest in a tract of the pooled unit that is nearer than the pooled unit line, give the distance to the nearest point on that unleased/non-pooled tract boundary.

Item 26. Provide the RRC District No. associated with the field.

Item 29. Use the following codes for Well Type: O = oil; G = gas; B = oil and gas; I = injection/disposal, R = storage, S = service, V = water supply, C = cathodic protection, T = exploratory test (core, stratigraphic, seismic, sulfur, uranium).

Item 30. Enter the approximate completion depth at which you may complete in each field listed. This depth must be less than or equal to the Total Vertical Depth.

Item 31. Distance to Nearest Well. Required only for wells identified as oil or gas in Item 29 and includes distance to any applied for or permitted location or completed well.

Item 32. Provide the total combined number of oil and gas wells only (include all applied for or permitted locations and completed wells). Do NOT include injection, disposal or other types of service wells.

Railroad Commission of Texas
Oil and Gas Division
Application for Permit to Drill, Recomplete or Re-Enter

Form W-1D 07/2004
Supplemental Directional Well Information

1. RRC Operator No.	2. Operator Name (as shown on P5 Organization Report)	3. Lease Name	4. Well No.

Lateral Drainhole Location Information

5. Field as shown on Form W-1

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Bottom hole Lease Line Perpendiculars #1
_____ ft. from the _____ line and _____ ft. from the _____ line.

12. Bottom hole Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

5. Field as shown on Form W-1

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Bottom hole Lease Line Perpendiculars #2
_____ ft. from the _____ line and _____ ft. from the _____ line.

12. Bottom hole Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

5. Field as shown on Form W-1

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Bottom hole Lease Line Perpendiculars #3
_____ ft. from the _____ line and _____ ft from the _____ line.

12. Bottom hole Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

Railroad Commission of Texas
Oil and Gas Division
Application for Permit to Drill, Recomplete or Re-Enter

Form W-1H 07/2004
Supplemental Horizontal Well Information

1. RRC Operator No.	2. Operator Name (as shown on P5 Organization Report)	3. Lease Name	4. Well No.

Lateral Drainhole Location Information

5. Field as shown on Form W-1

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Terminus Lease Line Perpendiculars #1
_____ ft. from the _____ line and _____ ft. from the _____ line.

12. Terminus Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

13. Penetration Point Lease Line Perpendiculars
_____ ft. from the _____ line and _____ ft. from the _____ line.

5. Field as shown on Form W-1

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Terminus Lease Line Perpendiculars #2
_____ ft. from the _____ line and _____ ft. from the _____ line.

12. Terminus Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

13. Penetration Point Lease Line Perpendiculars
_____ ft. from the _____ line and _____ ft from the _____ line.

5. Field as shown on Form W-1

6. Section	7. Block	8. Survey	9. Abstract	10. County of BHL

11. Terminus Lease Line Perpendiculars #3
_____ ft. from the _____ line and _____ ft from the _____ line.

12. Terminus Survey Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

13. Penetration Point Lease Line Perpendiculars
_____ ft from the _____ line and _____ ft from the _____ line.

TYPE OR PRINT USING DARK INK
* *READ INSTRUCTIONS ON BACK*

MONTHLY PRODUCTION REPORT

Form PR
02/2005

RAILROAD COMMISSION OF TEXAS
Oil and Gas Division
(1701 N. Congress)
P.O. Box 12967 – Capitol Station
Austin, Texas 78711-2967
http://www.rrc.state.tx.us

Operator Name

Operator Address

City State Zip

P-5 Operator No. ■ RRC Dist No.

Page _____ of _____

M M / Y Y Y Y
Production Month/Year ■

○ Fill here if CORRECTED REPORT

EXACTLY AS SHOWN ON RRC RECORDS (If multiple Volumes/Codes exist, put them on the next line)				OIL/CONDENSATE (whole barrels) – Total for Month * *SEE BACK FOR EXPLANATION OF DISPOSITION CODES* *					CASINGHEAD GAS/GAS WELL GAS (MCF) – Total for Month		
Field Name (list alphabetically) Lease Name (for gas, provide well #)	O/G/P [Oil/Gas/ Pending]	RRC Identifier [Lease/Gas ID/ Drill Permit/API#]	Commingling Permit # or LSE Total (T)	On hand, beginning of month	Production	Disposition		On hand, end of month	Formation Production	Disposition	
						Volume	Code			Volume	Code
1	2	3	4	5	6	7	8	9	10	11	12
■ DO NOT WRITE IN THIS AREA			■	DO NOT WRITE IN THIS AREA			■	DO NOT WRITE IN THIS AREA			■
■ DO NOT WRITE IN THIS AREA			■	DO NOT WRITE IN THIS AREA			■	DO NOT WRITE IN THIS AREA			■

REMARKS **- Attach sheet if more space needed**

Print Name_____ Signature_____

Title_____ Phone w/AC_____ Date_____

I certify that I am authorized to make this report, that it was prepared by me or under my supervision and direction, and that the information stated herein is true, correct and complete to the best of my knowledge.

INSTRUCTIONS FORM PR: MONTHLY PRODUCTION REPORT REFERENCE: Statewide Rules 27, 54, 58(b)

FILING REQUIRED. File Form PR monthly for all crude oil, casinghead gas, gas well gas, and condensate produced. File Form PR for oil wells for any month there is production, whether the production was prior to or after initial completion, and/or for stock on hand. File Form PR for gas wells from the month of the completion date shown on Form G-1. For recompletions file Form PR from the recompletion date on both oil and gas wells. If the lease is recompleted and there is stock on hand, continue reporting that stock on Form PR under the old RRC Identifier until the stock is disposed of. On reclassified wells, Form PR is due from the month of test as shown on Form G-1 and/or Form W-2.

WHEN AND WHERE TO FILE. File the original monthly Form PR with the Commission's Austin Office on or before the last day of the month following the month covered by the Form PR report. Upon the request of any transporter authorized to remove liquid hydrocarbon from the lease, you are required to supply that transporter with copies of all Form PR reports, including corrected reports, until requested to discontinue doing so.

CORRECTED REPORTS. Fill in the "CORRECTED REPORT" circle in the upper right-hand corner of Form PR. List ONLY those leases being corrected and provide all identification information and monthly figures (Columns 1-12) for each listed lease.

ORDER OF THE REPORT AND CERTIFICATION INFORMATION. File a separate report for each RRC District. List field names alphabetically. Under each field, list lease names in the numerical order of the RRC identifier (drilling permit #, API#, lease #, or gas ID#). Report lease total production and disposition for each lease. For new leases not yet assigned an RRC identifier, use the drilling permit or API number. For multiple page reports covering one district: (a) number the pages sequentially within the district (e.g. page 1 of 15, page 2 of 15,etc.), (b) staple together the pages for the district, and (c) complete and sign the certification section at the bottom of **each page**.

COMMINGLED PRODUCTION. Report surface commingling of oil/condensate on Form PR. If a lease is commingled under only one commingle permit number, report the total oil and gas production and disposition for the lease in Columns 1-12, listing the commingle permit number in Column 4. If a lease is commingled under multiple commingle permits, provide the lease total oil and gas production in Columns 1-12, and enter the letter "T" for "Total Production" in Column 4. Directly under the "lease total production," repeat the lease with each commingle permit number (Column 4). Provide the oil/condensate production and disposition volumes by commingle permit numbers in Columns 3-9, but do not list gas production for the commingled production breakdown. The total of all oil/condensate volumes by commingle permit must equal the lease total volume line.

VOLUMES. Indicate volumes for each lease as monthly totals, in whole numbers, computed by accepted standards of measurement. Do not use decimals, fractions, or negative numbers. See disposition information below.
OIL/CONDENSATE. Column 6 is for actual oil/condensate produced. Do not include water or circulating or frac fluids (oil, condensate or refined oil) brought from another lease. Do not show as a disposition any oil/condensate used from stock tanks to frac or treat the same lease until you have determined that the oil/condensate will never be recovered; at which time use oil/condensate disposition Code 74. The volumes in Column 5 plus Column 6 minus Column 7 must equal the volume in Column 9 for each lease. NOTE: If skim liquid hydrocarbons are charged back by a saltwater disposal facility, include the charged volume in Column 6 as oil/condensate production. Show the same volume in Column 7 as a disposition with an oil/condensate disposition Code 8 for skim liquid hydrocarbons.
CASINGHEAD GAS/GAS WELL GAS. Report all gas produced regardless of disposition. This includes test production and vented or flared gas, as well as regular production. Use MCF (thousand cubic feet) at base pressure of 14.65 psi and base temperature of 60°F. Under formation production Column 10, show gross production volumes after meter corrections have been applied. Column 10 must equal Column 11 for each lease. You no longer need to report volumes for gas lift gas injected or recovered; however, if you produce gas that is used for gas lift, indicate the initial disposition of that gas using gas disposition Code 5. For gas well gas, you no longer need to convert the condensate production to a gas equivalent volume; the RRC will automatically convert the volume.

DISPOSITION. In Column 8, enter an oil/condensate disposition code for each oil/condensate disposition volume shown in Column 7. In Column 12, enter a casinghead gas/gas well gas disposition code for each casinghead gas/gas well gas disposition volume shown in Column 11. You may use more than one code; however, do not use the same code more than once in Column 8 or Column 12 for the same RRC identifier. Show all dispositions according to the initial use or purpose.

CRUDE OIL/CONDENSATE DISPOSITION CODES:	CASINGHEAD/GAS WELL GAS DISPOSITION CODES:
0 Pipeline **1 Truck** **2 Tank car or barge** **3 Net oil/condensate from commercial tank cleaning** – as calculated on the basis of a shakeout test. Show BS&W as oil/condensate disposition Code 6. Indicate the name of tank service and/or R-2 facility in REMARKS on Form PR. **4 Circulating oil/condensate** – original movement off lease. File a notification letter with the appropriate district office and Austin. **5 Lost or stolen** – includes loss from fire, leaks, spills, and breaks, as well as theft. File Form H-8 if more than 5 barrels. **6 Sedimentation** – BS&W from commercial tank cleaning. Show net oil/condensate as oil/condensate disposition Code 3. Indicate the name of the tank service and/or R-2 facility in REMARKS on Form PR. **71 Other – change of operator** **72 Other – road oil** **73 Other – lease use** **74 Other – production lost to formation.** **75 Other** – Provide an explanation in REMARKS on Form PR. **8 Skim liquid hydrocarbons** – as charged back on Form P-18 by a saltwater disposal system.	**1 Lease or field fuel use** – gas used or given to others for field operations including lease drilling fuel, compressor fuel, etc. **2 Transmission line** – gas delivered to a transmission line that will not be processed further before ultimate use, including gas used for industrial purposes, irrigation or refinery fuel, etc. **3 Processing plant** – total gas delivered to a gas processing plant (any plant or facility reported on Form R-3). Do not report the "plant breakdown" of the gas on Form PR. **4 Vented or flared.** –Indicate why the gas was vented or flared in REMARKS on Form PR. **5 Gas Lift** – gas you use, sell or give to others directly for gas lift. Do not include gas delivered to pressure maintenance or processing plants even though it is ultimately used for gas lift. **6 Repressure or pressure maintenance** – gas delivered to a system or plant that does not extract liquid hydrocarbons. That system or plant will report on Form R-7. (A pressure maintenance plant or system that does extract liquid hydrocarbons must file Form R-3. If gas is delivered to a plant or system that recovers liquid hydrocarbons, use casinghead gas/gas well gas disposition Code 3 even though the gas may ultimately be injected for pressure maintenance.) **7 Carbon black** – gas delivered to a carbon black plant. **8 Underground storage** – gas injected directly into a storage reservoir.

NOTE: Operators wishing to file on continuous feed paper or computer-generated forms or electronically must receive prior approval. Contact the Oil and Gas Division's Production/Permitting Services section for more information.

02/04

For further information on §3.80 or the accompanying forms, call Ms. Leslie Savage at (512) 463-7308.

TRD-200402122
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: March 25, 2004

♦ ♦ ♦

Texas Savings and Loan Department

Notice of Application for Change of Control of a Savings Bank

Notice is hereby given that on March 10, 2004, an application was filed with the Savings and Loan Commissioner of Texas for a change of control of a state savings bank, Heritage Bank, SSB, Terrell, Texas, by HGroup Acquisition, Inc., Dallas, Texas, including James D. Dondero, Mark K. Okada (and certain entities controlled by Messrs. Dondero and Okada).

This application is filed pursuant to 7 TAC §§75.121-127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of state, Texas register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

Issued this 31st Day of March 2004, at Austin, Travis County, Texas.

Danny Payne, Commissioner Texas Savings and Loan Department

TRD-200402231
John Fleming
General Counsel
Texas Savings and Loan Department
Filed: March 31, 2004

♦ ♦ ♦

Texas State University System

Request for Proposals for Executive Search Firm

The Texas State University System is requesting proposals from executive search firms to assist the Board of Regents in identifying candidates to serve as the next chancellor of The Texas State University System, the third largest higher education system in Texas with over 66,000 students at nine component locations. The current chancellor, Mr. Lamar Urbanovsky, has requested an opportunity to focus in the planning and construction area after serving as chancellor for 25 years and being with the system for 31 years.

Proposal Requirements:

A. Ten copies of the proposal are to be submitted no later than 12:00 noon on Friday, April 23, 2004, to:

Chancellor Lamar Urbanovsky

The Texas State University System

200 E. 10th Street, Suite 600

Austin, TX 78701-2407

(512) 463-1808

B. The proposal should include the following information:

1. List of all principals in the firm and where they are based.

2. Number of years the firm has been providing this type of service.

3. List of organizations for which the firm has provided this type of service in the last five years, including contact persons.

4. Number of current active searches and the states where the searches are based.

5. A brief description of the methodology for providing these services.

6. The resumes of all individuals who will be coordinating the efforts.

7. The fees for providing the services requested and an estimate of the direct expenses involved for providing these services not included in the quoted fees.

8. List of other costs that could possibly result from the effort not included in Item 7 above.

9. The proposals should be submitted on an 8.5 x 11 sheet format, with all pages sequentially numbered and either stapled or bound.

C. Services requested:

1. Assist the Board of Regents and/or selection committee in identifying three to five of the best candidates from which the Board may select a system chancellor.

2. Assist the Board of Regents and/or selection committee in developing appropriate advertisements and correspondence to maximize a quality applicant pool. The consultant should provide any other services necessary, beyond the above stated efforts, to enhance the applicant pool in order that the best five candidates can be identified.

3. In identifying the three to five candidates the consultant will be responsible for background checks as approved by the Board of Regent and/or the selection committee and will assist in arranging interviews to be conducted in Austin, Texas.

D. Criteria and Evaluation:

1. In evaluating and selecting the consulting firm, the Board of Regents will consider past experience in conducting executive searches, the participation of minorities and women in the process, the expertise of the participants and the reasonableness of the fees. Interviews of the perspective consultant firms may be held, but are not planned at this time.

2. The Board of Regents reserves the right to consider all factors it believes to be relevant in selecting a consultant. The award of the consultant contract will be based upon the Board's determination of the best overall value to The Texas State University System.

TRD-200402117
Lamar Urbanovsky
Chancellor
Texas State University System
Filed: March 24, 2004

♦ ♦ ♦

Request for Proposals for System Governance Study

The Texas State University System is requesting proposals from established higher education consulting firms to provide a comparative analysis of the system's current governance structure to other system governance models. Elements to be considered, but not limited to, should include organizational structures, services provided by the system, staffing levels and cost of operations. The Texas State University System was established in 1911 and today is the third largest higher education system in Texas with an enrollment of more than 66,000 students at nine component locations.

Proposal Requirements:

A. Twenty-five copies of the proposal are to be submitted no later than 12:00 noon on Friday, April 23, 2004, to:

Chancellor Lamar Urbanovsky

The Texas State University System

200 E. 10th Street, Suite 600

Austin, TX 78701-2407

(512) 463-1808

B. The proposal should include the following information:

1. List of all principals in the firm and where they are based.

2. Number of years the firm has been providing this type of service.

3. List of organizations for which the firm has provided this type of service in the last five years, including contact persons.

4. Current activities and the states where they are based.

5. A brief description of the process and time line for providing these services.

6. The resumes of all individuals who will be coordinating the efforts.

7. The fees for providing the services requested and an estimate of the direct expenses involved for providing these services not included in the quoted fees.

8. List of other costs that could possibly result from the effort not included in Item 7 above.

9. The proposals should be submitted on an 8.5 x 11 inch format, with all pages sequentially numbered and either stapled or bound.

C. Services requested:

1. The Texas State University System currently operates under a parallel chancellor- president (decentralized) form of governance with eight component presidents and the chancellor reporting directly to the Board of Regents. The Board of Regents seeks a comparative assessment of the system operations under the current structure of governance with others available. The final report submitted to the Board should include for each type of governance model a comprehensive organizational analysis along with suitable staffing levels and realistic budgets. The final report should conclude with a recommendation for an appropriate governance structure to provide the best operations and efficiencies for The Texas State University System.

2. Twenty-five copies of the final report (bound in an 8.5 x 11 inch format) will be required as the final work product.

3. Attendance at a Board of Regents meeting to explain and respond to regent and university administrator questions concerning the final report.

D. Criteria and Evaluation:

1. In evaluating and selecting the consulting firm, the Board of Regents will consider past experience in providing higher education consulting services of this nature, the participation of minorities and women in the process, the expertise of the participants and the reasonableness of the fees. Interviews of the perspective consultant firms may be held, but are not planned at this time.

2. The Board of Regents reserves the right to consider all factors it believes to be relevant in selecting a consultant. The award of the consultant contract will be based upon the Board's determination of the best overall value to the system.

TRD-200402118

Lamar Urbanovsky
Chancellor
Texas State University System
Filed: March 24, 2004

♦ ♦ ♦

Texas Department of Transportation

Request for Proposal for Aviation Engineering Services

The City of Uvalde, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division, will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Uvalde, Garner Field. TxDOT CSJ No.:0315UVALE Scope: Provide engineering/design services to improve grading and drainage on east side of airport at the Garner Field Airport.

The DBE goal is set at 6%. TxDOT Project Manager is John Greer, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan and 5010 drawing are available online at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

by selecting "Garner Field"

Interested firms shall utilize the Form AVN-550, entitled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Eight completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight April 30, 2004 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on May 3, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. May 3, 2004 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members.

The final selection by the sponsor's committee will generally be made following the completion of review of proposals. The committee will

review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or John Greer, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200402120
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 25, 2004

♦ ♦ ♦

Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for

any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for

themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200402192
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: March 30, 2004

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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